This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

50 JR.

40.
1028.

S.400.13 + 13

400.13 - 13

CANADA,

AND

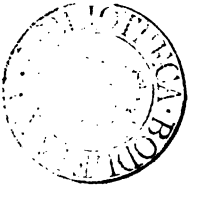
THE CANADA BILL;

BEING

AN EXAMINATION OF THE PROPOSED MEASURE FOR THE FUTURE GOVERNMENT OF CANADA;

WITH AN

INTRODUCTORY CHAPTER,



CONTAINING

SOME GENERAL VIEWS RESPECTING

THE BRITISH PROVINCES IN NORTH AMERICA.

BY

JOHN BEVERLEY ROBINSON, Esq.,

CHIEF JUSTICE OF UPPER CANADA.

Nec vidisse semel satis est.——6th ÆNEID.

LONDON:

PUBLISHED BY J. HATCHARD AND SON, 187, PICCADILLY.

MDCCCXL.

1028.

LONDON:
Printed by WILLIAM CLOWES and SONS,
Stamford Street.

CONTENTS.

	Page
Letter to the Secretary of State for the Colonies . .	v
Introductory Chapter of Remarks upon the British North American Provinces	13
Statement of the provisions of the Bill introduced in 1839, for uniting the Provinces of Canada . . .	81
Discussion of the leading objects of the Bill . . .	91
Examination of the Clauses in detail	161
Copy of the Bill (Appendix)	205

TO THE

RIGHT HON. LORD JOHN RUSSELL,

HER MAJESTY'S SECRETARY OF STATE FOR THE COLONIES,

&c. &c. &c.

My Lord,

I beg leave to address to your Lordship's consideration some remarks upon the value, interests, and prospects of her Majesty's North American Provinces, which may, at the present moment, repay the trouble of a perusal; and, more especially, an attempt which I have made to call the earnest attention of Parliament, and of this country, to the nature and probable consequences of the measure relating to the future government of Canada, which was introduced into the House of Commons at a late period of the last session.

Your Lordship's official connexion with the colonies makes me desirous that what I have ventured to state thus openly and freely, at a crisis of peculiar interest, may engage your consideration; and I have an additional motive, in the belief that your Lordship will be disposed to examine with care all that may be urged in respect to the important measure to which I refer. I will add, that whatever difficulties your Lordship, as a member of the Government, may find in dealing with the Canadian question, I am persuaded there are few whose individual opinions upon it are less likely to be influenced by the mere personal importunities, or the prejudices, of others.

These, I think, are the first pages, except so far as I have

been publicly connected with official documents, that I have ever printed with, or without, my name, upon a political question; and if it be an advantage to those who are chiefly responsible for a public measure, that all who are to share in the decision should have an opportunity of considering the arguments against it, as well as in its favour, your Lordship will probably not regret that I have made this exertion.

If the course, which has always appeared to me to be on several accounts inexpedient, should be adopted, and should produce those unfortunate results which are apprehended by me, and not less by persons of better judgment and of more experience, I should have to consider hereafter, and perhaps under painful circumstances, upon what satisfactory ground I had suppressed the public declaration of my sentiments at so critical a moment, when my accidental presence in England had enabled me to state them with convenience, and possibly not wholly without effect. I could only account for the omission by acknowledging an apprehension that by openly expressing my opinions upon a public question, however respectfully, I might incur the displeasure of the Government, and that I had therefore been silent; a reason which, if it should have become necessary to give it, would not have done honour to the Government, or to myself.

To those persons who may feel so much interest in the subject as to read what I have written, it will be very likely to occur, that instead of stating in a public manner, and at this late period, my strong objections to the union of the provinces, it would have been more natural and proper that I should have taken an early opportunity of submitting to the consideration of the Government such opinions as I entertained, apprising them not only of what I may have believed to be injudicious in the suggestions of others, but offering unre-

servedly, at the same time, such suggestions of my own as my experience and observation in the colonies might have prompted.

Your Lordship, however, will do me the justice to acknowledge that in this respect I have not been wanting. I refer to the letters addressed by me to her Majesty's Secretary of State for the colonies, on the 23rd of February, and on the 9th and 29th of March last, for the purpose only of observing that as the explanations of my views which are contained in them have not been in fact made the foundation of any measure or proposition of the Government, it has not appeared to me, that the circumstance of my having thus communicated with your Lordship's predecessor upon the public questions referred to, should preclude me from discussing openly the same points of general policy, if it seemed to me that any important advantage might arise from my doing so.

It has been stated in public debate in strong terms, and I think by your Lordship, that the difficulties which have occurred in Canada, including the late calamitous insurrections, and the whole train of evils which led to them, have flowed from the unfortunate separation of the provinces in the year 1791. Nevertheless that measure, like the present, was recommended to Parliament by a Royal message; and if the opinion just referred to be correct, then that person would have rendered an inestimable service to his country, who by a timely warning could have saved the Government from falling into the supposed error. But, My Lord, having been an inhabitant of Canada during the whole period of the separation which has been thus lamented, I have ventured to form a different opinion of the effect of that measure. I ascribe to other causes the difficulties which have arisen in Lower Canada; and I believe that the reuniting the provinces would prove to be, in

fact, a much more unfortunate policy than the separation of them is even supposed to have been. However this may be, infallibility in the measures of the Government is not assumed to be an attribute of the present age any more than of the last; and I am anxious that while there is yet time, those considerations which her Majesty's Government have thought it safe to disregard should, at least, pass in review before those by whose judgment the future destinies of the Canadas must soon be decided, for good, or for evil.

There were different methods of accomplishing what I wished. If I had conveyed my opinions upon these public questions through the pages of a review, or of an anonymous pamphlet, or the columns of a newspaper, I should have done on this occasion, what I have on all others studiously and wholly abstained from, throughout the twenty-seven years which I have spent in the service of the Crown.

Having determined not to make an exception in the present case, I have thought it the most open and proper course not to confine what I intended to offer to the view of persons taking one side or the other in the political affairs of this country; but to submit my opinions equally to the consideration of all who may imagine that they have any claim to attention.

It is quite unimportant that I should add, what may nevertheless not be improper, that if in the manner in which I have declared these opinions, or in declaring them at all, I shall, in your Lordship's judgment have erred, the error is one for which I am alone answerable, for until the moment when this book shall reach your Lordship's hand, its contents will have been unknown to any one; the intention even to write it has been known only to myself, and was, in fact, not formed until very recently.

To your Lordship I need not speak of the vast importance of

the matters which I have endeavoured to discuss, nor of the difficulties which seem to stand in the way of their satisfactory adjustment.

I am quite sensible that most of the political considerations necessary to be weighed are of that nature that I cannot pretend to possess any particular advantage for deciding upon them, in consequence merely of the station which I have long held in Upper Canada; and I neither expect nor desire that my opinions should be allowed from that circumstance to have any other claim to attention than should arise from the conviction that standing in the relation which I do to the Government, I could not have opposed myself to the measure which they have introduced, except under the strongest conviction that its adoption might prove fatally injurious to the authority of her Majesty, and to the security and welfare of her Canadian possessions.

In the year 1774, when Parliament was occupied in the first attempt to form a constitution for Canada, it was well observed by an eminent person in the debate upon the bill then pending, "Gentlemen who have considered the subject slightly may "regard it with partiality; those who have considered it "deeply must contemplate it with diffidence."

If I look with distrust (as indeed I have always done) upon the proposed union of the provinces, it is not because I have, upon *slight consideration,* become *partial* to any other plan which I could confidently recommend as being free from difficulty; on the contrary, the selection of any course as being decidedly the best still requires, I believe, more examination, (and of a different kind,) more discussion, and more minute and deliberate comparison than seem to have been yet applied.

If my *contemplating* this point with *diffidence* should, according to the idea of the celebrated person referred to, arise

from my having considered the question more anxiously and deeply than may have been thought necessary by all who have made up their minds upon it, that will not appear surprising when it is stated, that I have resided in Canada from my birth, and that the happiness of myself and of a numerous family, in common with that of nearly half a million of my Canadian fellow-subjects, among whom my life has been spent, depends upon the result of the measures which are to be now adopted.

The paper, or rather the book, to which I here entreat your lordship's attention, so far as it contains any statements of facts, will be found, I believe, to be incontrovertible. In regard to the opinions, and more especially the anticipations of the future, which are expressed in it, these of course, like most other opinions and anticipations, are very liable to error. If, upon matters connected exclusively with Upper Canada, I have spoken with more than usual confidence, it may be accounted for by the facts, that for the last eighteen years I have been a member of the legislature, having served nearly an equal period in each house; that I have been, for a much longer time, in the public service of the province; that I have had the satisfaction of receiving the thanks of the legislature for the part taken by me in adjusting their financial difficulties with Lower Canada, and have been honoured with the express approbation of my Sovereign, and the repeated approbation of the Secretary of State during my long career of public duty. I may venture, I believe, further to state to your Lordship that, notwithstanding the many changes of administration in England and in the colonies, I have not, that I have been aware of, been so unfortunate as to incur the displeasure, in any instance, of those under whom I have had the honour to serve. The three distinguished persons who have represented the royal authority in Upper Canada for the last twenty years are now in England; and they

will bear me witness that their confidence and friendship, which I believe I retain, were not purchased by the surrender of my own judgment, or by the suppression of my opinions on any matter that could affect the welfare of the province.

I am well aware, My Lord, that so long and intimate a connexion with the colony as I have described may very possibly, in respect to some points, have produced a bias which persons accustomed by their position to more extended views would be in no danger of contracting. And I dare say that the apprehension of this has induced the British Government to resort frequently to the expedient of sending out commissioners to report upon the institutions and condition of colonies to which, up to the period of their employment, they had been utter strangers. But on this side there lies another danger not altogether imaginary. It may happen that the officers selected for this special service may, by their previous course of politics in England, have been committed to the support of theories and opinions not merely visionary, but pernicious and unsound, to which they may bend, however insensibly, not their reasonings and recommendations only, but their statements. They may have principally in their view the advancement of some personal or party object quite apart from the interests of the colony to which they have been sent, but to which objects they may nevertheless be content to sacrifice the safety, the internal peace, and the religious interests of a distant territory with which their fortunes are in no measure identified, and to sacrifice with still less hesitation the character of local administrations, of public bodies, and of public servants, whose claims to justice may be esteemed a small matter in comparison with some general course of policy to be advanced on this side of the Atlantic.

Your Lordship, I am sure, will readily admit that, in look-

ing to the persons whose testimony may most safely be relied upon as the foundation of parliamentary proceedings, the first requisites to be ascertained are integrity of character and honesty of purpose; and where these are equal, it will hardly be believed by your Lordship that Providence has condemned the inhabitants of Canada to such a hopeless inferiority of intellect, that they must be supposed incapable of giving so satisfactory an account of what they have seen and heard, and experienced in a daily intercourse of thirty or forty years, as may be gathered by strangers in travelling along its borders, and in mixing with those whom chance and the courtesies of society may throw in their way,

I will end by observing that I shall bear, as cheerfully as others, my individual share of whatever consequences may flow from those measures which Parliament shall ultimately adopt, after the question has been presented, in all its aspects, to their consideration. But I could never patiently bear the reproach which I should feel I deserved, if, at such a moment, I refrained from communicating freely to others the apprehensions which I now feel so strongly myself.

I have the honour to be,
Your Lordship's most obedient humble servant,
J. B. Robinson.

Wandsworth, 30*th Dec.*, 1839.

INTRODUCTORY CHAPTER.

Reflections upon the portion of the North American Continent once held by Great Britain—Her present Possessoins there—Their peculiar value from their position, extent, and natural advantages—Circumstances favourable to the permanence of their connexion with Great Britain—Nova Scotia—New Brunswick—Lower Canada—Upper Canada—These Provinces collectively considered—Necessity of legislating respecting Canada—Remarks upon some questions affecting Canada—Religion—Defence—Colonization—Public Improvements—Comparisons between the United States and Canada—Steam Navigation to Halifax—Lord Durham's Report—Future Government of Canada.

British provinces in America.

By those who are sufficiently humble to believe in the existence of a superior intelligence, it is very frequently remarked, as they pass through life, how much better matters have been ordered for them by Providence than they would have been ordered by themselves, if their wishes had availed them.

In the affairs of nations we constantly see reasons for making the same observation, and what is now passing in this kingdom presents a remarkable instance, upon which it would be pleasing to dwell, if it were not for the inconvenience of the digression. I will take, however, a no less striking, though perhaps a less interesting example from the subject before me.

Let any one look attentively at the map of North America, and mark what were once the possessions of Great Britain upon that continent, and what portion of them she still retains. Then let him consider how frequently, and even within the present century, historians and statesmen have lamented the loss of those immense colonies, (such as no nation ever before possessed,) which form now the republic of the United States. We have heard by turns the policy condemned which led to the revolt, and the military blunders deplored which rendered

it successful; and by many even the conquest of Canada has been regretted as a calamity to England, because it delivered the old American colonies from the presence of an enemy, whose encroachments bound them to their mother-country by a sense of danger; and they were thus left at liberty to concert schemes of independence, which with so formidable a foreign power behind them, they would probably not have thought it prudent to aspire to.

But no one who desires that the British power should continue for ages to maintain its ground in North America can *now* think these events unfortunate.

Many who bore arms in the contest alluded to are still living, and yet, in the interval that has elapsed, the American States have acquired a population twice as great as that of England was at the time of the struggle.

It is only necessary to consider this fact, to look at the almost boundless territory which these states comprise,—to contemplate their increasing trade, the great line of sea-coast, the variety of climate, and productions, and the abundance of all the materials for forming a powerful nation;—it is only necessary to consider these things for a moment, and we must arrive at the conviction that the separation of such colonies from the parent state was inevitable.

They must soon have outgrown the condition in which they would have required protection; they have already long outgrown it; and the conflicting interests of trade, with the inconveniences which mere distance occasions in the exercise of an actual superintendence, would sooner or later have produced desires strong enough to overbear the feelings of attachment, and the sense of duty, more especially in colonies settled as those had been.

But is it not clear that, if the event had been delayed, those other possessions upon the American continent, which Great Britain still retains, would have become peopled with colonists of the same description, and that when at last the struggle came, all would have gone together?

Again, if we admit, as I think we must, that the circumstance of the older colonies having severed the connexion at so early a date, has been in fact the means of saving the present British provinces to the mother-country, it is scarcely less certain that the war of 1812, which was engaged in by the United States, mainly for the purpose of subjugating the Canadas, has had the effect of binding them, as well as Nova Scotia and New Brunswick, much more strongly to the crown. Before that war the United States were scarcely looked upon by the subjects of the British empire as a foreign country; the probability of hostilities was not anticipated, and of course not guarded against; the citizens of the republic came in numbers to settle, especially in Upper Canada, and, but for the war, in a few years thousands of those fertile acres, which have since afforded a home to loyal and grateful emigrants from England, Ireland, and Scotland, would have been occupied in a manner much less conducive to the maintenance of British connexion.

The war was happily undertaken at a time when the adjoining states of America were but thinly inhabited, and when the invasion of Canada was, in consequence, attended with many difficulties which time has removed. It has had the effect of calling the attention of England to a danger which Lord Selkirk, in his very able book on emigration, pointed out to the government so early as the year 1805; it has produced in the British colonists a national character and feeling, and has taught both countries to appreciate their position more correctly.

The citizens of the United States have no longer imagined that they could reasonably expect to find themselves admitted at once to become the proprietors of land which they had recently invaded as public enemies; and Great Britain has been awakened to the necessity of the more just and cautious policy of settling her own dominions with her own subjects.

Although, therefore, the war of 1812 was considered at the time, as in many respects it was, an event much to be de-

plored, it has not been without very striking advantages, so far as respects the maintenance of British power in America; and notwithstanding it was undertaken at a time when the Canadas were but weak and little able to resist, still there is much reason to believe that if it had been deferred but a few years longer, the difference of circumstances would have been in favour of the invading armies rather than against them.

Nor are these the only instances in which events, supposed at the time to be unfortunate, have tended strongly to the preservation of British power on that continent.

Every one knows that at the conclusion of the American revolutionary war in 1783, by some strange mismanagement of the British negotiators, there was ceded to the late American colonies not merely their independence (which was all they professed to have been contending for), but with it an immense region to which they had no claim, and which was greater in extent, I believe, than all the thirteen colonies together.

I mean that western and north-western territory which is now becoming the abode of millions.

This, too, has been reckoned a misfortune, as it was certainly a fault in those who made the extraordinary concession; but a little consideration, I think, will convince us that, after all, it is not to be regretted. A country of such boundless extent, of such variety of climate and production, to a great part of which the Mississippi, and not the St. Lawrence, is the natural outlet —would hardly have been maintained for a long period in dependence on the British crown. Being divided from the United States by no natural boundary, the amalgamation of a people speaking the same language would long before this time have proceeded to such an extent as to decide almost silently the question of country.

There being no other resource so desirable, and so extensive for the outpourings of the older States, these people would have passed to that quarter, scarcely in less numbers than they have done under other circumstances; and it is quite obvious that in

the event of a war, the territory would have been much too remote a field for British forces to have acted in with effect, for they would have been too distant from their resources.

And, besides, it can scarcely be doubted that the collisions which such a distribution of the American continent must have led to would have made the preservation of peace between England and America altogether hopeless.

I do really believe, therefore, that the Englishman who desires that his country should retain a permanent footing upon that continent, and the British American colonist who earnestly hopes (as the great bulk of them do) that the connexion may endure while the British name lasts, have both of them reason to rejoice in the facts I have adverted to, and to be more than contented that matters now stand precisely as they do.

And now let us look again at the map of North America; and, while our eye runs over those noble portions of it which still glory in the name of British, we cannot but be struck with their extent, their position, their natural advantages, and their inestimable importance to the empire.

Nova Scotia and New Brunswick.

We there see Nova Scotia with Cape Breton and New Brunswick forming together a territory larger than some of the powerful kingdoms of Europe, abounding in excellent harbours accessible to the fleets of England, teeming with coal, the most valuable production in the present age, and under present circumstances, that Providence could have bestowed upon them; presenting it, too, at that very point, where it is most important it should be found, the edge of the American continent.

And while these fine colonies occupy precisely that position which, in reference to this object and to the fisheries, makes their possession invaluable to a commercial country, whose greatness, if not her security, depends on her naval power, they are at the same time so placed that their combination with Canada, in any effort of physical force for throwing off the dominion of the mother-country, would not be practicable, if all traces of that generous loyalty should be obliterated which now distinguishes them among the subjects of the crown.

They never can, in any stage of their advancement, entertain the idea of associating with Canada in order to form an independent nation. Their geographical position forbids it. Protected and aided by Great Britain, their gallant militia, the soldiers stationed there, and whatever resources their zeal and courage can supply, can by her fleets be transported to aid in the defence of Canada against a common enemy; but their effective union with Canada, in order to defy Great Britain, is an event physically impossible, as it is morally speaking improbable.

Canada.

Then, looking to the two provinces of Canada, in what other quarter of the American continent could so vast a territory have been placed, with the hope of maintaining it as a British possession; a territory embracing such an extent of fertile soil, and stretching into a climate so genial as the western parts of the upper province ?

Separated, as Upper Canada is, from the United States by a well-defined boundary, and having (it is true) that foreign nation along her whole extent of frontier, it tends most materially to her safety that she is accessible to no enemy from behind.

No power intervenes between her and the uninhabitable regions of the north. She will always have behind her the protection of an impenetrable waste.

It is an error to suppose, as many do, that the same progress of events which must naturally have led, at some period, to the separation of the other American colonies from the Crown, will in time as naturally lead to the loss of Canada.

If it were so, there would indeed be small encouragement to England to foster her growth by exertions which would in that case be only accelerating the period of her independence.

But a little reflection must conduct us to the conclusion that this apprehension is imaginary.

Putting again out of view all feelings of loyalty, and all obligation of duty, the event of Canada being a sovereign and independent power is surely not one which the world can

ever be destined to see. With a foreign nation, already numbering fourteen millions of people, interposing between her and the Atlantic coast, with but one outlet to the ocean, closed for more than five months of the year, Canada could never become a naval power, and could never protect her commerce against the weakest maritime nation in Europe. Her inhabitants must see, and indeed all British Canadians do now see, and well understand, that nothing can coincide more happily than their feelings, their interest, and their duty, under the present arrangement. They require precisely that protection which the naval superiority of Britain enables her to give, and, in return for it, they, and the other North American colonies, can contribute incalculably to maintain that naval superiority by their timber, their harbours, their fisheries, and their trade, which even now supplies employment to nearly two thousand British ships.

The people of all these colonies know full well that, if their independence were granted to them, they could not maintain it, and that the only alternatives are their belonging to Britain, or belonging to her greatest commercial rival. They have shown, on more than one occasion, as unequivocally as deeds can speak, on which side their preference lies, and that they do not waver in their allegiance. This country has not the feeling of attachment to create. It is there; it has taken strong root, and has a generous growth; she has only to cultivate and to shelter it.

If, besides her possessions upon the skirts of America, valuable for their harbours, their fisheries, and their coal, it is desirable for Great Britain to have a territory on that continent of such extent and fertility that she may reckon upon drawing from it, for ages to come, the timber, the hemp, the grain that she may have to seek from abroad; a country in which millions of her subjects, flourishing happily under her laws, may furnish employment for her manufacturers, her shipowners, and her seamen; in which the superabundant population of these kingdoms may find a desirable home, and in

which British capital may be usefully and profitably employed; then no man, who will examine and consider, can hesitate for a moment to declare that Canada is precisely that country.

Lower Canada. There are in the Lower Province immense tracts on the south side of the St. Lawrence, accessible to the emigrant, where the land is fertile and excellently watered, and the climate particularly healthful.

The winters are indeed severe, as compared with this country and with most other parts of America; but on the other hand fuel is abundant and cheap, and the seasons undoubtedly admit of raising such crops as will support in plenty a dense population: in short, that part of Canada possesses such advantages as enable it to improve certainly, and beyond measure, the condition of the industrious poor, who languish for want of employment in many parts of the British islands. And to desire that these should be transferred thither would, to say the least, be no unpatriotic wish for an Englishman to entertain: for in a country like this, where trade and agriculture are pushed to the utmost, it is remarkable how speedily the vacuum occasioned by emigration is filled up, to that point at least which admits of labour being furnished for all. There are, in that small treatise of the late Lord Selkirk on emigration which I have already cited, some remarkable and interesting proofs adduced of this from the Highlands of Scotland and the Hebrides, from whence there has been considerable emigration to America, from time to time, for more than sixty years past.

Upper Canada. Then, when we turn to Upper Canada, we find a country of large extent, with a soil unsurpassed in fertility, and a climate that admits of the cultivation of the very finest wheat; abounding in valuable timber, and in the most useful minerals, with the advantage of navigable waters running through it, and around it, in a manner that cannot be seen without admiring so beautiful an arrangement of nature.

Inland waters. The chain of lakes and rivers, from Lake Superior downwards, composes the noblest inland channel of fresh waters on the

globe; and it is, I think, no extravagant pretension to challenge for the St. Lawrence the pre-eminence over every other river in the world. There are some which, passing through hotter and less healthy climates, are not obstructed for any part of the year by ice; and some, perhaps, which, from their source to their outlet, flow over a longer line; though there are few that are navigable for ships of large burthen to so great a distance from the sea. But let it be considered that no marshes deform the banks of the St. Lawrence, which are everywhere well defined; no crocodiles or alligators infest its shores; it abounds in what is valuable, but produces nothing that is noxious; no deadly fevers desolate the country through which it runs; it is subject to no inundations; and its clear and wholesome waters are fit for every domestic use. I may add, that, under a temperate climate, it pursues its majestic course through fertile lands, in which the state of slavery nowhere prevails, and lands which are distinguished by the language, the laws, the freedom, and the enterprise of the British race.

Around the province, to the northward, flows the noble river Ottawa, which, by its connexion with Lake Huron, forms a chain of waters encircling that portion of the vast territory of Upper Canada which includes all its agricultural settlements, and, in fact, all its surveyed and organised districts.

Beyond this line, it is doubtful whether civilization will ever be extended; and even within it there is an immense tract yet unexplored, of which the greater part is believed to be uninhabitable; not so much on account of the climate, for it all lies within the 47th degree of north latitude, but because, so far as it is known, it is in a great measure covered with lakes and rocks, and presents a most uninviting appearance. It is reported, however, that within this region there are large tracts of fertile land, which will, of course, not be occupied till the more accessible parts of the country have been filled.

Extent of Upper Canada.

Upper Canada, taking into consideration only that part of it which is bounded on the south and west by the St. Lawrence and the lakes Ontario, Erie, and Huron, and on the

north by a line drawn from Gloucester Bay, on Lake Huron, to the settlements on the River Ottawa, is indeed a magnificent territory, as regards its climate, its soil, timber, and other productions, the inland seas, by which it is almost encompassed, and the innumerable rivers and streams which everywhere intersect it. But still (and this fact has always appeared to me very important to be borne in mind) it is not that almost boundless territory which it is by many supposed to be; its area will be found not to be greater than that of several of the individual States of the American Union; not materially differing from the area of the single State of New York; and looking (as for practical purposes it is reasonable to do) upon that territory as composing Upper Canada, which lies within this line of demarcation, and is alone likely to be the seat of a resident agricultural population, it is a compact territory, happily situated, as regards its relative position to the United States, and to the other colonies, capable, from its extent, of supporting a people sufficiently numerous, with the aid of Great Britain, to defend their soil from invaders; but not large enough, considering the circumstance of its inland position, to maintain itself as a sovereign power on the American continent. When I say that it is happily situated, I mean for the purpose of perpetuating British dominion in North America. For let us consider for a moment, if Upper Canada had been filled, like the state of New York, with an American, instead of a British population, how could Lower Canada have been preserved a British colony? We need hardly pursue the inquiry further: the fate of the other British possessions in America would not be long uncertain, if the flag of England no longer waved on the citadel of Quebec, or over the waters of the St. Lawrence.

Improbability of their separating from the mother-country.

The conclusions which I desire the above observations to lead to are that the British possessions on the continent of North America are precisely those which the circumstances of Great Britain require; that they are placed exactly where it is most desirable they should be; that if their extent had been greater

it would have been a disadvantage rather than a benefit; that they are large enough to maintain a population sufficient, with the aid of Great Britain, to defend them; that they are not so situated as to admit of their combining to throw off the dominion of the mother-country; that they could not rationally hope to exist as an independent nation, and have, therefore, no other alternative before them but to become members of the American confederacy, or to continue what they are—the favoured colonies of Great Britain, protected by her fleets and armies, participating freely in her trade, aided by her capital, and confirmed, by her example and her power, in the possession of a constitution and laws better calculated than those of any other country to secure the best interests and promote the happiness of the human race.

They have shown constantly and unequivocally (not speaking at this moment of the peculiar case of the French population of Lower Canada) that they infinitely prefer the latter alternative. It remains for the mother-country to consider whether she desires as earnestly, on her part, that the connection shall continue, and whether and by what means she can ensure its duration.

Having thus contemplated these colonies collectively, let us glance at the present actual condition of each.

Nova Scotia.

Nova Scotia is said to contain about 225,000 inhabitants. Its chief riches consist in its mineral productions, its harbours, and its fisheries. Much of its land is unfit for cultivation; and I am not aware that there remain within it any large tracts at the disposal of the Crown, upon which new settlements can be formed; but it is clear that its population is trifling in comparison with what it is capable of containing. It will no doubt in time be much more densely peopled: some of its lands are excellent, and its climate is remarkably salubrious. Its position upon the coast, being the nearest point to Europe of the continent of America, gives it many advantages. The accession to its population will arise chiefly from the impulse which may be given to its trade.

New Brunswick.

New Brunswick, with the same great advantages of a position on the Atlantic coast, and the same mineral productions, has a much greater extent of good arable land, and immense forests of valuable timber. Exclusive of the millions of acres involved in the question respecting the north-eastern boundary, she has very large tracts fit for the reception of British emigrants, who can be transported thither readily and cheaply. Her soil (though in a less degree than Nova Scotia) is broken by barren and rocky tracts, and her climate, like that of Nova Scotia, though particularly favourable to health, does not admit of the growth of the finer descriptions of wheat to which Upper Canada is so well adapted. She is rich, however, in natural productions; her fisheries and her trade may be pushed to any extent that her capital admits of, and she has tracts of good land sufficient to sustain a very numerous population. At present I think her numbers are estimated at about 250,000.

Loyal feeling of the inhabitants of these colonies.

In both these colonies the English laws and language exclusively prevail; and everything that is British is valued as it it deserves to be. Their inhabitants are a loyal people, contented with their political condition, not impatient of their dependence on England, but glorying in their connection with her. On every occasion where they could show this feeling, they *have* shown it in a manner that left no room for doubt. I need not advert to very recent occurrences, in which this country felt that their conduct did them honour; for there has been no period in their history in which they would not readily have encountered any danger, and borne every sacrifice, rather than to see the British name tarnished by a humiliating concession.

In these provinces, as in Upper Canada, the earliest settlers were natives of America, who had unsuceessfully supported the Royal cause during the revolt of the American colonies; and who, when that contest was terminated, were provided by the Crown with an asylum in these new possessions. Their

loyalty had no equivocal origin, whatever may be the sentiments of some politicians of the present day.

It was patriotism of the purest cast. Most of them would, doubtless, have preferred that Parliament had forborne to tax them; many of them perhaps doubted of the right to do so; but they did not think their purse the only object to be guarded with jealousy. They were jealous of their character for loyalty; scrupulous about forfeiting their allegiance; and attached to the throne by feelings of affection and respect, as well as by duty. They were willing to entertain the hope that, without the desperate recourse to arms, whatever was right would in the end be conceded to them; and they did not partake of that longing for self-government which it is now quite clear, from history, was the moving impulse, in the Eastern States at least, at a very early period of the controversy.

Their loyalty was sincere, for it led to the sacrifice of property, of country, of kindred, and friends; and the feeling which has since predominated with them and their descendants is a feeling of satisfaction and pride in the exertions and sacrifices by which their fidelity was proved. They have been troubled by no visitings of repentance for having performed their duty.

In the neighbouring republic, for many years after the peace, a fashion prevailed, which I believe is now wearing out, of declaiming before assembled multitudes, on the anniversary of their independence, against the tyranny of George III., and holding him up to the reprobation of the world as a sanguinary oppressor. It followed naturally from this practice, and from the care taken to inculcate the same feelings in the education of their youth, that in the United States the name and memory of King George III. were regarded with hatred, while the inhabitants of the adjoining British colonies dwelt upon them, as they still do, with veneration and love, such as a child entertains for a just and indulgent parent. These feelings sprang from a pure source; they do not seem to have been always understood by public men in this country, but they still exist in all their strength; and if they do not long continue to animate

the population which inherits them, the fault will not be theirs. Those who have hitherto obeyed their generous impulse have felt that they were but discharging their duty to God, to their Sovereign, and to their country; but they have not seldom had the mortification to find that their open and steady support of principles and institutions which they knew to be justly entitled to their obedience and respect has been placed to a less creditable account. By some it has been ascribed to the influence (it would indeed be an excellent influence) of an imaginary "family compact," or to what they have called "*Orangeism*;" by others to an innate subserviency to power, for sordid purposes: to anything, in short, but the existence of that principle which is plainly and solemnly enjoined by the Christian religion, and of that feeling the most manly and honourable in our nature, which teaches us to stand by the right, through good report and evil report, and to cling the closer to what is just and good, in proportion as we see it to be ungenerously assailed.

Several of those gallant officers, who have for many years past represented their Sovereign in these provinces, are now in England; they are well known to be men of unblemished character; and they have it in their power to appreciate the conduct of that class of the Queen's subjects to which I have referred, upon surer grounds than the relations of nameless witnesses; for they have resided among them, and known them. I am confident they will agree with me when I say that, whatever other qualifications may have been possessed by the promulgators of such opinions as I have adverted to, they had not those qualities of the mind and heart which entitled them to sit in judgment upon the public principles of such men as I have spoken of, however humble may have been their station.

Lower Canada.

Lower Canada, unfortunately for herself, and for the mother-country, was originally peopled under other circumstances.

It is not my intention to enter in any degree into the history of recent political events in that colony. They have become pretty well known. I have already spoken of the

climate and soil of this extensive and valuable province. It is fortunate that it still remains in the power of the government to provide largely for the reception in it of British emigrants; and in that very quarter, (on the south side of the St. Lawrence,) where they would in every point of view be most eligibly situated.

The French Canadian politicians, it may have been observed, have very strenuously resisted such measures as were intended to lead to the introduction of British settlers; as if that would be an infringement of an exclusive right of theirs to the country. What success they may have met with in inculcatting this notion among the people generally I do not know; but if, because their religion has been so fully protected, their language retained in all public acts, and their tenures and laws preserved unchanged, they have brought themselves to think that they have the further right to have the province to themselves, it must be acknowledged that, for their own sakes, it is very desirable that they should be undeceived as soon and as decidedly as possible.

Some thousands of industrious and loyal emigrants from Ireland, and from the Highlands of Scotland, would check such absurd ideas of nationality as effectually as a military force; and humanity and sound policy seem to invite loudly to the measure.

The entire population of Lower Canada is reckoned at something between 600,000 and 700,000; of which upwards of 450,000 are said to be the descendants of the original French inhabitants. The peculiar position in which these have been placed, by the indulgent policy of their conquerors, has led to embarrassing consequences. It is plain, from the proclamation of 1763, that it was intended to establish the law of England in the province; and it was by that act of royal authority established, and nominally in force there, from that period until the passing of the Quebec Act in 1774, though it seems to have been suffered in the mean time, in a great measure, to give way in practice to the old law of the colony.

There has been published very lately, from the notes taken in short-hand by Sir Henry Cavendish, a member at that time of the House of Commons, a full account of the debate in that House upon the Quebec Act, which I have just referred to. It is an interesting volume at the present moment; but I think most who read it will experience a strong feeling of disappointment at the inconsistent and indistinct manner in which the policy of the bill appears to have been explained and advocated by most, if not all, of its supporters, as well as at the nature of the opposition which was made to it.

The whole English population then in Canada consisted of about 360 families, while the French were estimated at 80,000; and it seems strange, certainly, that the same speakers who called it cruelty in the Government towards the British inhabitants to respect the attachment of the French to their ancient laws, were yet for compelling Government to give to the colony, though it was not desired, a House of Assembly, which must have placed in the hands of a people lately conquered, and at that time essentially foreign, the power to control the British subjects who were living among them, in everything that affected most their welfare and tranquillity.

Of all who spoke in that debate, I think Sergeant Glynn, though he seems to have fallen into this error respecting an assembly, applied himself to the discussion in language the most pertinent and clear. In one of his speeches he uses the following striking arguments, which, after what has lately occurred, and in the present posture of affairs, cannot be read without much interest:—

"To any predilection of the Canadians for their ancient laws and customs I should be inclined as much as any one to yield as far I could do so with safety; but to carry my compliance to the exclusion of the laws of England, to consent to substitute in their place the laws of France, and to add to all this a form of legislature correspondent to that of the kingdom whence those laws were borrowed, is what I can never consent to; and I own my objection to the measure was

strengthened when I was told that there was a prejudice and predilection in these people favourable to those laws, and that it was considered good policy to avail ourselves of this predilection to build a system of government upon it so contrary to our own.—I should have thought it was rather our duty, by all gentle means, to root those prejudices from the minds of the Canadians; to attach them by degrees to the civil government of England; and to rivet the union by the strong ties of laws, language, and religion.

"You have followed the opposite principle, which, instead of making it a secure possession of this country, will cause it to remain for ever a dangerous one. I have contemplated with some horror the nursery thus established for men reared up in irreconcilable aversion to our laws and constitution. When I was told by the Noble Lord that they were insensible to the value of those laws, and held them in contempt, wishing to be bound by laws of their own making,—when I was told they had no regard for civil rights, I must confess that it operated with me in a contrary way; and I could not help thinking that it furnished an unanswerable argument against gratifying them. I think that we could not, with humanity or policy, gratify them in their love of French law and of French religion."—*Debates on the Canada Bill in* 1774, pp. 258-9.

There is much in this, so far as regards the French laws, that does honour to the good sense and foresight of the speaker, if it was sincerely urged. But it is to little purpose *now* to talk of the wisdom or imprudence of the course which was *then* pursued. If it was the mere impulse of benevolent and magnanimous feeling of the Government, the error was one of an amiable kind; but, considering the time, there were probably other reasons, which it was not thought necessary to insist upon in debate. Perhaps it was even then intended to separate, at no distant day, the western part of Canada from the French settlements, and the time was not looked forward to when the British population in the latter would number more than 150,000, and constitute, in point of capital, intelligence,

and, one may almost say of physical force, the more considerable part of the population.

We see how the French Canadians have carried themselves under the circumstances; but, taking them as a people, their character and conduct, I have reason to say, are differently estimated among those who have known them long and observed them closely, and who have been equally indignant at their treason and distressed at its consequences. For my own part, I think that their assumed, settled, bitter, and permanent hostility to their British fellow-subjects has been too much dwelt upon as the inevitable consequence of the difference of races.

That they should have obeyed their new government from fear, or a constrained sense of duty, rather than from affection, it was natural to expect, under any circumstances; though their conquest was, in fact, a blessing to them; and, if they could have prevailed upon themselves to think so, would have brought them unmixed good.

But we cannot wonder that they thought otherwise. Being allowed to retain all that most tended to make them a distinct class of British subjects, and to keep alive old attachments and recollections, they continued to be a description of people likely to be easily impressed with suspicions and alarm, and readily misled to entertain hopes, and indulge in desires, the most criminal, and, at the same time, the most absurd. But I believe that, for years and years after the conquest, hatred of their fellow-subjects, and of their government, was not an active or settled principle in the minds of the poor Canadian peasantry. That they had ambitious individuals among them, who, as the race swelled in numbers, began to cherish a very insane ambition, reckoning upon their power to corrupt their countrymen, there can be no doubt. We have seen the whole process of the evil springing from this source, and working through a period of more than thirty years; and we have just witnessed the melancholy result. But the French Canadian leaders were not the only agents, they had able as-

sistants and instructors; neither did they succeed without great difficulty, nor until after a long course of persevering agitation; and they would not, I am satisfied, have succeeded at last if the Government of this country (I speak not of any one or more administrations) had not unfortunately trusted too much to the effect of unwearied indulgence, and forborne, in consequence, to exhibit that firmness which is necessary to secure confidence and submission, and without which no government will ever have credit with the ignorant and the prejudiced for believing itself to be in the right.

That the French Canadians are now generally impressed with the most unkindly feelings toward the British name and nation cannot be doubted or denied. Besides the state of irritation to which they had been brought before the insurrection, by the artful practices of their leaders, they have most of them suffered most severely; and, though their sufferings were wantonly brought upon themselves by outrageous misconduct, yet we must all know human nature better than to think it likely that these 450,000 people have arrived at the conviction that they have only themselves to blame.

How long their present disposition and sentiments may continue no one can pretend to say. Of course that will very much depend on circumstances. That they are now in that temper that would make it very unsafe, if it were otherwise desirable, to place it in their power to bring their animosity to bear upon the political measures of *Upper Canada*, is an opinion that I think must be very generally entertained by those who will duly reflect upon the subject.

Upper Canada.

Passing to the last-mentioned colony, I will remark, in addition to what I have stated, that, of the four British provinces, Upper Canada is unquestionably that in which time has made, and will continue to make, the most rapid and surprising changes. Its extent, its temperate climate, its fertility, its lakes and rivers, all combine to attract emigrants to it; and when it is considered in how short a time its population has risen to its present amount, and how rapid has been the increase of late

years, it is evident that a generation or two must make changes that would astonish us now if we could foresee them.

There are people in Upper Canada still living who saw it when it contained not a cultivated farm, nor any white inhabitants, but a few fur-traders and soldiers, and perhaps ten or a dozen French families, on the south side of the Detroit river. I can myself remember when its population was estimated at less than 30,000; in 1812 it was supposed to be about 70,000; in 1822, 130,000; and in 1837, the census showed a population of 396,000; but all the townships were not then returned. The number I suppose to amount now to something between 450,000 and 500,000. These are all living in the enjoyment of the English law, both civil and criminal, administered in the same manner as in England. The English language is universally spoken; and recent events have shown that there is among the people generally a sound feeling of attachment to their constitution and government, a strong sense of duty to their Sovereign, and a determination to resist any danger that seems to threaten their connection with the British Crown.

The Government has at its disposal large tracts of fertile lands in this province, on which emigrants may be settled; and when these are occupied there will doubtless be found others in quarters which have not yet been sufficiently explored, equally fertile, though less eligibly situated.

Emigration.

But so soon as all traces of the late extraordinary agitation shall have vanished, and the affairs of the adjoining colony shall have been placed in a more settled state, persons with more or less capital will continue to emigrate to the province, as they have formerly done, selecting lands by purchase from the Government, or from individuals. The intelligence, the capital, the feelings of attachment to Great Britain and to her institutions, which accompany this class of settlers, make them an acquisition of great value to the province; and it is evident that a vast additional impulse must be given to this description of emigration by the regular establishment of steam-packets between England and New York, and still more per-

haps by the direct communication by steam with Halifax and Quebec, which, under the very judicious and liberal arrangement entered into by the government, will go into effect in the month of May next. By these facilities the safety of the passage is almost insured; and during the summer three weeks only are required for placing the emigrant from these kingdoms in the centre of Upper Canada. One great advantage of this change is, that it will induce many, before their final resolution is taken, to visit the colonies, and judge for themselves in what way their interests or comfort may be advanced by removing to them. It will soon be better understood to what description of persons emigration is likely to be beneficial, and what class it is not likely to suit; the negative as well as the positive effect will be useful to the colony; the discouragement of those to whom the experiment would be disastrous, as well as the encouragement of others whose industry and prudence would make the change advantageous to the province and to themselves.

Among the crowded population of these kingdoms there must always be many who become reduced from a state of comfort to destitution by their imprudence or misfortunes. When persons of this description, in the hope of bettering their condition, emigrate with large families to a new country, at a period of life when their energies are impaired, and with habits wholly unsuited to their new position, they have nothing to expect but increased discomfort. To succeed as emigrants, they require either money and prudence, or a sound constitution and industrious habits. By throwing themselves upon a new country without resources, and without plan, they only aggravate their misfortunes; they separate themselves from the sympathies and assistance of friends and relatives, and they either remain in the province to be pressed down lower by their difficulties, or they return to England disappointed and disgusted, imputing to some fault in the country that want of success which they had none of the requisites for ensuring. It is a painful delusion for such persons to look forward to govern-

ment patronage for affording them the means of support in their newly-adopted country. Undoubtedly some have by these means been rescued from difficulty; but such a resource must necessarily be limited. If they had all the qualifications requisite for filling public offices, and if their misfortunes were allowed to overrule all the claims of others, still the field would soon be wholly occupied by such of them as had arrived first; and those who might follow must be doomed to disappointment.

There is another class of emigrants whose adventure is frequently unpropitious. I mean young gentlemen well educated, and of good families, who, having discovered an unfortunate proneness to idleness and dissipation, are encouraged by their friends to remove to Upper Canada, in the hope that, leaving behind them some of the temptations to vice, they may suddenly take up new habits, and become useful to themselves, instead of being a burthen and discredit to their friends. In general this experiment in domestic policy signally fails. Withdrawn from the observation of parents and friends, they are delivered from a most powerful check upon the impulse of vicious propensities; and in a society less crowded than that of Europe their misconduct is more conspicuous, and more certain to be attended by a ruinous loss of reputation. At that period of life the mind requires something to create interest and excitement; and when a young man of liberal education is placed in a remote wilderness, with nothing around him to invite to the pursuits of literature and science, and no rational amusements within his reach, there is great danger that even the well-disposed will yield to the temptations, or rather I should say to the discouragements, of their position. To the unthrifty and heedless it is certain ruin.

Those who should emigrate to Canada are the able-bodied labourer, the industrious and sober mechanic, and any persons of whatever class, who, deriving from some source a moderate income, upon which in this country they could barely subsist, may enjoy in Upper Canada, upon the same income, a greater abundance of the comforts of life, and may with prudence and

economy be at the same time gradually forming a property which, in case of their death, will secure their families against absolute destitution. Those possessed of considerable capital, or combining the qualifications of youth, activity, and discretion, may make the experiment lead, in their case, to much greater results. Such persons may, with the present facility of communication, without much inconvenience go and judge for themselves. That they will soon do so, in large numbers, and will find their account in it, I have no doubt; and when the inestimable advantage of steam navigation has greatly swelled, as it must do, the number of this class of emigrants, then the country will have arrived at that state when much that has hitherto occasioned disappointment and failure will no longer apply.

The diffusion throughout the province of well-educated and respectable families, and the more general introduction of those habits and objects which give refinement and interest to life, will banish the dull weariness which drives too many to vicious indulgences, as a mere resource for occupying time. There will then be found, throughout all parts of Upper Canada, those attractions, and consequently that contentment, which, from the accidental assemblage of many such families as I speak of, are now to be found in detached portions of the province, such as Cobourg, Woodstock, &c. The introduction of steam-packets has in effect brought all these colonies very much nearer to Europe; and must in a short time lay open the truth, upon the points I have spoken of, to such numbers, that no misrepresentation or delusion can triumph long; and then, on the other hand, there will be no necessity for enlarging upon advantages which can no longer be hid.

Climate.

I have observed it to be common for persons in this country who are inviting people to emigrate to New South Wales and New Zealand to make statements in pamphlets, and newspapers, and at public meetings, representing the climate of Upper Canada as notoriously unhealthy; and I have seen in one or two instances Toronto especially mentioned as being

subject to this disadvantage above other parts of the country. Toronto, therefore, may without unfairness be referred to as a test of the truth of such statements.

It will be admitted that no condition in life is exempt from such diseases as spring from the unwholesomeness of the air we breathe; and it is most to the purpose in such inquiries to look for examples among those who are in the enjoyment of the necessary comforts of life, and who, it may be supposed, refrain from those heedless excesses which inevitably shorten life in all countries. I will mention a few instances of such a description as I allude to. I can speak from memory of Toronto, as it is now called, for 40 years. During that time it has always been a military station, seldom garrisoned by less than two companies of soldiers. For several years during the last war two or three regiments were quartered there, and for many years since it has been the station of a regiment. I cannot call to mind that I have heard or known of an officer of the regular forces having died there in all that time, and I believe not one has. I have frequently spoken of this in Canada, and have never been told that I was in error.

To give another example. Toronto contains now nearly 13,000 inhabitants. Until very lately three of the messengers in attendance upon the Legislature were persons who had lived there since the first houses in it were built. Of these, one died about three years ago, another within the last year, and the third, who was a soldier in the British army at the battle of Bunker's Hill, and is now, I believe, nearer 90 than 80 years of age, is still in the personal discharge of his duty.

Since the year 1792, when the province was organized, no governor has died there during his administration.

No judge of the superior court has, during that time, died in the province, until after his retirement from office, and none, I think, until he had attained the age of 75 years; and it is remarkable that, although in two or three instances judges of advanced age have yielded to the fatigues of a long and harassing assize, there is no case, that I have heard of,

the administration of justice upon the circuits having been obstructed by any member of the court having been attacked by a disease such as climate could have had a share in producing. When the bad accommodations of a new country are considered, the inferior diet, and the long journies over bad roads, at a season of the year when diseases were most to be apprehended, this affords strong evidence that there can be nothing unusually dangerous in the climate of Upper Canada.

I will add yet another proof. In 1812 I was one of a company of 100 volunteers, who followed Sir Isaac Brock in the expedition which terminated in the capture of Fort Detroit. This body of men consisted of farmers, mechanics, and gentlemen, who, before that time, had not been accustomed to any exposure unusual with persons of the same description in other countries. They marched on foot, and travelled in boats and vessels, nearly 600 miles, in going and returning, in the hottest part of the year, sleeping occasionally on the ground, and frequently drenched with rain; but not a man was left behind in consequence of illness.

I do not mean to intimate that Canada enjoys by any means an immunity from disease. Life is utterly uncertain there, as Providence has wisely decreed it shall be in every country; and, while I am writing this, painful facts may be taking place which would disable me in another month from repeating some of the statements which I have now made. But neither province of Canada can be justly represented as unfavourable to health, though in some parts at the present day the fevers and agues which generally attend the first progress of settlements are of frequent occurrence in a certain season of the year; especially among those who are much exposed to the weather, without wholesome food to sustain them. In the early settlement of the country it is probable that this inconvenience prevailed very generally.

In Lower Canada such disorders, if they are known at all, are extremely rare; but, from the greater degree of cold in

winter and of heat in summer, acute diseases are perhaps rather more frequent there, though I am not sure that they are in any considerable degree.

The official returns of the army must afford fair grounds of comparing, so far as soldiers are concerned, the climate of Canada with that of other stations. I have heard medical men, who have served in almost every foreign quarter, declare their preference for the climate of Canada. But, claiming no peculiar excellence for it, it is at least not too much to say that, whatever may have been the case in the early history of the country, it is with little justice that efforts are now made to deter persons from emigrating to Canada, by speaking disparagingly of its climate. I believe it to be in general less favourable to health than England, but not peculiarly subject to fatal diseases.

I know nothing of our Australian colonies but what I read in print, and chiefly in the accounts of persons who seem to take a warm interest in their advancement. In these I generally find the admission, that, in point of fertility of soil, they are far behind the provinces of Canada; and, speaking from them, I must say that if, instead of becoming a settler in Canada, it be really a wise measure to cross the line, and make a voyage 7000 miles longer, in order to reach a country where an acre of land is reckoned to be necessary for the support of a sheep—where a shilling sterling is paid for a pound of meat, which, in Canada, would buy four; twenty shillings for a bushel of wheat, which may be bought in Canada for five; 35*l.* for an ox, and 18*l.* for a cow, which prices in Canada would respectively purchase four of each: if, I say, there be really wisdom in making this choice, and humanity in urging the people of this country to adopt it, some other and better reasons should be given for the preference than those which relate to the climate. For I do certainly believe that, if we regard either the average enjoyment of life throughout the year, the equable distribution of moisture necessary to the growth of crops, or the alternations of heat and cold which are favourable

to the most substantial products of the earth, Canada has a decided advantage, in point of climate, over any of the southern or eastern colonies.

Having made this hasty reference to the present actual condition of the four provinces, I return to the consideration of them collectively, as the seat of British power in America, for the purpose of making some remarks upon what they may yet do for the British name and nation. Provinces collectively considered.

They now, as we have seen, contain a population of about 1,600,000; and this not in any part a slave population: not, as in some of our southern and eastern possessions, a people composed in a small proportion only of the British race, mixed with thousands or with millions of people imperfectly civilized, enslaved by heathenish superstitions, and not British in any sense, further than as regards the sovereignty over their country. They are like so many inhabitants of these kingdoms, with the exception of a part of the population in one of the colonies only. They have the energy, the love of freedom, the enterprise, and whatever other good qualities characterise Britons and their descendants. Their population.

If we compare the amount of this British-American population with that of Scotland at the time of the Union, and after she had borne for centuries a distinguished part in history, we must be struck at once with the degree of importance to which these colonies are advancing, and with the rapidity of their progress. Referring to Canada alone, there have been four remarkable periods when its affairs have in a particular manner engaged the attention of Parliament, viz. 1774, 1791, 1822, and 1839. In the year 1774 what is now Lower Canada was computed to contain 80,000 inhabitants, of which 360 families only, or about 1200 in all, were British. Upper Canada was then uninhabited except by Indians.

In 1791 Lower Canada was said to contain about 120,000 souls, and Upper Canada 10,000.

In 1822 Lower Canada claimed 450,000 inhabitants, and Upper Canada about 130,000.

At this time it may be assumed that Lower Canada contains about 700,000 souls; and Upper Canada nearly 500,000. It will be seen, from this statement, that in these two provinces alone there is at this moment a greater population than Ireland contained at the time of the battle of the Boyne.

Let us now reflect upon their extent, and the fertility of their soil; that they have neither the drawback of a slave population, nor of a noxious climate; that the English laws, except in one province of the four, prevail throughout; that the most remote of them is within three weeks' voyage from a British port; that they are all accessible by water; and that from Toronto, the capital of Upper Canada, there are three uninterrupted channels to the Atlantic Ocean, namely, by New Orleans, New York, and Quebec. Can we fail, with these facts before us, to foresee their prodigious and inevitable increase in population, in wealth, in trade, in all that constitutes power? What must such a combination of advantages lead to in fifty years, in thirty, nay in twenty?

In countries so circumstanced there is a triple source of increase, which within a moderate space of time must lead, as it is visibly leading, to astonishing results. First, there is the natural increase of population, under circumstances the most favourable to it; next, the annual influx of emigrants; and, lastly, there is the addition to the wealth of the colony, from the thousands of acres newly redeemed in each year from the wilderness, and the constantly improving circumstances of the whole farming population.

Into what scale then shall the weight of the additional power thus accumulating be thrown? A few months ago, when this seemed likely to become a question, and the attention of this country was suddenly called to the existence of an unexpected danger in our American possessions, it was plainly enough shown that neither by the Government nor by the people were the possible consequences contemplated with feelings approaching to indifference. On the contrary, they

were ready, if it were necessary, to put forth their strength for the protection of these colonies, as if it had been a struggle for national existence.

Speculative men may continue to hazard opinions in political economy, based only on ideas of profit and loss, and uninfluenced by a sense of public honour, humanity, or duty; but with the Parliament or with the people of the United Kingdoms it will never be made a question whether a million of such subjects, as the British inhabitants of these four colonies have proved themselves to be, shall be deserted in a contest for the honour of the British flag. And if the question should turn only upon a cold calculation of interest, still there is little fear that colonies whose trade employs two thousand British ships, and produces a demand for British merchandize which is already reckoned by millions, will ever be willingly surrendered. That they can be defended there is no reason to question: there is indeed no ground for apprehending their loss, so long as Great Britain retains her supremacy on the ocean, and when that shall be at an end, what will become of her other colonies in all quarters of the globe? and what will be her rank among the nations? The vital question with her is the preservation of her naval superiority; and from those who believe that an Almighty hand rules the destinies of nations, it calls for the liveliest feeling of gratitude to Providence, that to aid her in maintaining the indispensable condition of her greatness, she has the harbours, the fisheries, the commercial marine, the timber, the hemp, the coal, which these colonies present, or may be made to yield.

It is wonderful to meditate on the change which the last twenty years have made in the comparative importance of North America; and impossible to estimate what must be the effect of the tide of emigration constantly ebbing from the Old World to the New, and never returning. What changes will be created by it in the course of time we can but faintly conjecture; but an Englishman should not be called an enthusiast who thinks he sees the finger of a protecting Providence

providing for the British monarchy so noble a buttress to sustain her against the shocks to which she may be exposed. And surely it is an interesting reflection, that Englishmen, Irishmen, and Scotchmen have a worthy home in that great continent, which may at some future day control the fate of nations, and in which the language and institutions of their race are so evidently destined to prevail.

It was a complaint of the great Lord Chatham, that the affairs of the British colonies had never engaged attention with a view to regulate them as one of the important interests of the nation, but were only taken up by piecemeal, and from time to time, as exigencies pressed. If, from the greater multiplicity of interests which have forced themselves upon the attention of parliament, in later times, there be yet some room for this complaint, is not this, on many accounts, the moment when a pause should be made, and a deliberate survey taken of the colonies, for the purpose of considering how they can best be strengthened and improved?

Project of a confederacy.

With respect to the four North American provinces, it has often been suggested, and many years ago as well as recently, that it would be well to unite them for the purpose of legislation, and to give them, if it were possible, the means of being represented in the Imperial Parliament.

In 1822, I did, at the request of the Colonial Department, express, at some length, my opinions upon a plan which many years before had been suggested from another quarter, and I ventured to add some propositions of my own. I thought that I saw many certain advantages in such a policy, and I believed then, as I still believe, that there was little in the apprehension which many entertained, that such an union would enable and dispose the colonies to combine together in opposition to the mother-country. That I think is forbidden by their relative geographical position; and there are other reasons which satisfy me that the fear need not be entertained; but I am not going to discuss the question here. I imagined at that time, that the people of Nova Scotia and New Brunswick would feel

no repugnance to such a measure; but Lord Durham found reason to conclude that they would be strongly averse to it; and I learn, from various sources, that such a proposition would not be by any means acceptable. Recent events, in Lower Canada, have naturally awakened their alarm, and they think that, if left to themselves, they will be much more certain to retain those institutions which they are wise enough to value. How much more reasonably may such an apprehension be felt in Upper Canada, by those who are asked to take the risk of that colony bearing up against the same difficulties single-handed!

Whether the objections said to exist be well founded or not, there would doubtless be a repugnance felt to placing the two provinces referred to in a condition to which they are said to be strongly opposed, and upon such grounds. The subject, however, is well worth considering. I confess that, for my own part, the apprehension of a danger of another kind, which I did state in 1822, but without laying much stress upon it, has been much strengthened by the events which have intervened. There seems, at all events, to be no probability of a plan of that nature being at present entertained.

Canada more particularly considered.

The attention of parliament, I apprehend, will be applied, in the approaching session, to the provinces of Canada alone. I will conclude these observations, therefore, with a short, or rather, perhaps, I should say, a very imperfect notice of some principal points which, in connexion with those two colonies, seem to press for consideration, though something of what may be said will apply equally to the other provinces.

Religion.

I.—In regard to religious interests. This is, in truth, the most pressing subject of all; not merely because religion is the only secure basis on which civil authority can rest, but for reasons of a higher and more sacred character, and, indeed, looking to political interests merely, it is of more consequence than can be readily understood by any one who has not resided in Upper Canada, that it should, as soon as possible, be finally

settled upon what footing religion is to rest in that colony:—1st. In regard to its connexion with the civil authority; and, 2ndly, in regard to the support intended to be given to its ministers.

These questions seem likely to force themselves irresistibly on the attention of Parliament at no distant day. I have not offered to the Government any opinion of my own upon the conflicting pretensions which have been set up, nor have I any intention of discussing them here. Whenever Parliament shall find it necessary to dispose of them, the following questions, I think, will present themselves for decision, some of which, it will be seen, apply to our colonial possessions generally.

1st. Is it, or is it not true, that the established church of England and Ireland is, by the constitution, the established national church in all the dominions of the Crown, except Scotland?

2ndly. Or has the church of Scotland, under the terms of the Act of Union, a *strict right* to be regarded in the British colonies, acquired before or since the Union, as an established church, or does she stand there upon the same ground and no other, legally speaking, as the several Protestant denominations dissenting from the Church of England?

3rdly. If the Church of Scotland has no right to be regarded as a church established in the colonies, will it, or will it not, be just and proper, notwithstanding, that, in consideration of her being the Protestant church established in one portion of the United Kingdoms, she should be placed, in regard to the support of her ministers, and perhaps also in other respects, upon any, and what, footing more favourable than that of the various Protestant dissenting sects?

4thly. If it be thought neither reasonable nor expedient

that there should be two Protestant churches in the colonies, recognised and endowed by the State, and two only, shall it follow as a consequence, that the distinction shall be confined to the Church of England alone; or shall any, and which, or all other Protestant denominations, be recognised and endowed?

5thly. If it be determined that other Protestant denominations besides the churches of England and of Scotland shall be recognised and endowed, or assisted by the State, shall the Roman Catholics be wholly unnoticed and excluded?

6thly. If it should be determined not to exclude them, and them only, what effect shall that resolution have upon the course to be taken in respect to the various Protestant dissenting sects?

7thly. What disposition shall be made of the particular provision created by the British statute 31 Geo. III., c. 31, for the support of a Protestant clergy in Canada? Shall Parliament declare and confirm the original intention of that statute, or shall its enactments be altered?

Upon some of these questions the early English statutes, and various enactments of modern date, with the public official acts of the Government, and the proceedings of colonial legislatures, will throw much light. I will only add, that nothing, in my opinion, is of more pressing importance to the civil and religious interests of the British American colonies, as well as to their peace, and even to their safety, than that these questions should be speedily, and, if possible, finally settled; and settled as much to the general satisfaction of the inhabitants as is consistent with the principles of Christian duty and the religious obligations of the State.

Upon the subject of education generally I make no remark,

because for that the measures and resources of the colony will continue to provide.

Defence of Canada.

II.—It is most important that Canada should be so strengthened, and particularly the Upper Province, as that its weakness should not invite attack. To do this promptly, and upon a well-considered system, would be the best economy in the end.

Fourteen or fifteen years ago, when the Duke of Wellington was in office, he determined to erect a work in a commanding position near the Niagara frontier, which would have included an arsenal, and formed a rallying point for the militia of the country. The site of the intended work was purchased, and measures were in progress for commencing it; but a change in the affairs of this country led to an abandonment of the design, and the land was relinquished to the former owner. If such a defence, however limited in extent, had been completed, and had been garrisoned by 200 men, who could probably nowhere else have found a cheaper quarter, the movement at Navy Island and its whole train of consequences would have been prevented.

The real danger is not so much that a public war is likely to be deliberately entered into by the United States, in the hope of acquiring the colonies, or in furtherance of any other policy. There are many and great opposing interests to prevent such a calamity as that would undoubtedly be; not only the interests of certain States which would in general be adverse to it, but the interests, and I believe the inclinations, of large and influential classes in all the States.

A war with England is not an event to be lightly thought of; and it can never be suddenly undertaken by the government, though they may be suddenly forced into it. There is throughout the United States a large class of persons, who, from principle and humanity, are opposed to war; and I look upon war, indeed, as an event not much to be apprehended, unless under the circumstance of some extraordinary change on this side of the Atlantic, or unless (which I repeat is the real and pressing

danger) it shall be left in the power of the border population of the United States to obtain, in the course of irregular hostilities, some such success as might lead to movements that would inevitably plunge both nations into war.

Happily there is peace now; and it would be easy to make such use of it as would place Canada clearly beyond the danger that I have alluded to.

III.—*Colonization* would be the cheapest, as well as the most certain and satisfactory method of providing the security that has just been spoken of; while it would confer other great benefits upon the provinces, and would richly and quickly repay to the mother-country the charge with which it would be attended; repay it, I mean, by the increased demand it would create for English manufactures. It would transfer that unemployed population, which is an incumbrance here, to a position where it would add greatly to the strength and wealth of the empire. Colonization.

There has arisen of late, I observe, a great desire to emigrate, and to encourage emigration, to the South Australian colonies. The disturbed state of Canada may have led in some measure to this change, and things may soon again fall into their former course. In the meantime, so far as respects the inclination of the emigrants themselves, there is nothing to be said. When they make up their minds to forsake their native land, they have clearly the right to choose in what other portion of the British dominions they will seek a home; and I should be reluctant even to persuade them, for they would be almost sure to become dissatisfied with any choice which had not been purely voluntary. It is perhaps a misfortune that the same individuals, especially of the humbler classes, are never likely to have it in their power to judge of both alternatives by actual comparison; but, nevertheless, the truth will some day or other be clearly ascertained. If the colonies of Australia are on the whole a better point for the poor emigrants from these islands to steer to, then *they* at least commit no error in going there: if, on the other hand, it

would be clearly wiser for them to look for a nearer home in our North American colonies, the discovery will not fail to be made sooner or later; and when the conviction flows from experience, rather than from persuasion, it will be complete, and will be lasting.

To what extent the Government of this country may have afforded any encouragement, which may have led to the preference I speak of, I am not aware. But in relation to that point it is natural to remark that the object of relieving the pressure at home must be attained at a vastly greater expense by removing emigrants to the Australian colonies than to those in America; that whatever may be the danger of disease and the sufferings attendant upon the voyage, they must be greatly increased by the immense distance, and by the different latitudes that are traversed; that emigrants taken to Australia are removed to a country from whence a return to their former home, in case of its being desired from any cause, is almost out of the question; and between which and their native country the communication of intelligence can never be such as the settlers in the British provinces enjoy. These are all considerations which the government would think it right to weigh, merely out of regard to the interest and comfort of the emigrants themselves; but there are other considerations which have a different bearing.

The Australian colonies are indeed noble possessions; and it is delightful to contemplate what an almost boundless field they will continue to present to the end of time to British industry and enterprise, and how they are calculated to sustain and spread the British name and race; but looking to the general interests of the British empire, are they, or are they not colonies that may with more propriety than Canada, Nova Scotia, and New Brunswick, be left to the gradual and natural operation of events for their progress in population and in strength?

Are not the hardy emigrants sent to the latter colonies more available as defenders of the rights of the empire, and placed in a quarter where their services are more likely to be import-

ant than they would be in Australia? Is it in that direction that the danger to British interests is most imminent? It would, indeed, be gratifying to feel the assurance that there is nothing to be apprehended nearer home; but it would hardly be prudent, I think, to act on such a conviction.

The United States of America are, for some reasons, more likely, perhaps, than any other nation to come into unfriendly collision with Great Britain; while on the other hand, happily there are circumstances which must naturally tend to bind them in the closest alliance. Springing from a common origin, having a common language, and actuated by the same enterprising spirit, their relations in peace are so intimately blended, that if war should ever come it must be attended with unusual calamities. I believe that at least the present generation are not likely to see the time when the government of the United States, or the people of most intelligence and property in that country, will desire to see their peace with England interrupted. And certainly every right-minded person must feel that there is nothing more earnestly to be wished, for the good of mankind, than that they should be bound together by the strictest ties of friendship. United they would possess a power, which while exercised justly, would be irresistible. One cannot contemplate without delight the possible existence of such a security for the peace and happiness of the world; but we must not turn a pleasing hope into a dangerous delusion.

We know the important and the delicate questions which are at this moment pending between the two governments; and the temper, little studious of peace, in which a large portion of the American people have seemed disposed to discuss them. We know also the discouraging fact that the continuance of peace with the United States may not depend upon the deliberate resolutions of their government, or of any constituted authority. The possession of our provinces may not be coveted by America, as a nation; but, nevertheless, the desires and jealousies which they awaken in a great portion of her people may make them the occasion of unavoidable hostilities.

I believe Great Britain would do an acceptable thing to many in that country, as well as a most expedient thing for her own interests, by putting an end, as speedily as possible, to all restless speculations about the possibility of suddenly seizing upon her American provinces.

Upper Canada now contains about half a million of inhabitants. If it contained two millions, as it must do at no *very remote* period, there would be little danger of the two countries being precipitated into a war by any irregular attempts at conquest in that quarter. And how soon might that result be attained by the public policy of Great Britain coming in aid of the rapid increase from other causes!

Lord Seaton, whose civil and military services in Canada have earned for him the distinguished approbation of his Sovereign, devoted his whole energy, during his eight years' administration in the Upper Province, to the advancement of the policy I speak of. He clearly saw, I will not say its importance alone, but its necessity; and he had the great satisfaction of witnessing in person the gratifying result. From how many thousands of British settlers, raised from destitution to independence and comfort, has he received the warmest expressions of gratitude to himself, and of devoted fidelity to the Government which had so benevolently assisted them! And with what pleasure must he have beheld the calls of duty responded to by thousands and thousands of these grateful people, whose only wish was to know where their services were most required for maintaining the rights of their country!

His predecessors in the government laboured most zealously in the same cause; and with the same assurance that they were thus laying the best foundation not only of provincial prosperity, but of national security and greatness. And I am sure I need not say to any one acquainted with the present lieutenant-governor of Upper Canada, that if the power were placed in his hands of pursuing the same policy upon a much larger scale, there would be no doubt of its being ably and faithfully employed.

Sir Peregrine Maitland and Sir Francis Head are both in England—both in a situation where their opinions and the advantages of their experience are easily accessible; and the present is a period, I think, when, with the aid of such information, it might be fitly considered whether the strength of the empire is as much consulted by planting the redundant population of these kingdoms in the islands of the Pacific as in the British provinces in America. That it may not be, for several reasons, desirable to strengthen British interests in the former, I am far from assuming; but with respect to the other colonies referred to, it has been made strikingly evident that the settler placed in them is not lost to the military service of the empire: and it is material to consider that three or four persons can be carried to the latter destination for the same charge that it requires to take one to the former.

The advantages to this country and to the emigrant, of directing the stream to the North American provinces is, I am glad to see, engaging, at this moment, much of the attention of the public in England and Ireland, and still more in Scotland, in consequence of the patriotic exertions made by a gentleman (Dr. Rolph) who, having emigrated from England, and lived for some years in Canada, has the advantage of knowing the latter country, and of being known in the former; and is peculiarly well qualified to make use of this advantage for the benefit of his fellow subjects. If he shall succeed by his public spirited and benevolent efforts, in attracting the co-operation of the Government and the active assistance of the influential landed proprietors in this country, he will accomplish a great public good, and entitle himself to the gratitude of numbers whose lot in life will be immeasurably improved.

If the time shall soon arrive (and it seems incredible that it can be much longer delayed) when the colonization of our American provinces shall be undertaken largely, as a measure of national policy, recommended by the strongest motives of advantage to the state, and of humanity to her people; it will then be felt and acknowledged that those have been sound and

rational views of public interest which a former member of the Government, Sir Robert Wilmot Horton, has been unsuccessfully labouring for nearly twenty years, with untiring energy and perseverance, to urge upon the favourable notice of the statesmen and legislators of this country.

When he *could* exercise the influence of office, he used it for the wise and benevolent purpose of raising nearly 3000 of his fellow-subjects from the depths of the most hopeless poverty, to the condition of useful, independent, and happy members of society. Those who are determined to cherish the disheartening conviction that the neglected, heedless, and starving pauper cannot, by this enlightened generosity, be transformed into the peaceful, industrious, and respectable yeoman, should refer to those who have governed them, and can therefore answer for their conduct, and if they are still incredulous, they should at least not assume the responsibility of obstructing the flow of national benevolence, until they have gone to Canada and seen the persons who are now living in these altered circumstances. The eight weeks' time which would be spent in going to the cultivated farms of these settlers, and returning to this country, would be a sacrifice not too great to encounter for the correction of an error which assists in perpetuating so much needless misery.

Public improvements.

IV.—Another method by which these colonies might be advanced is by facilitating public improvements within them. Of course it cannot be expected that the mother country should bear the charge of public works, in her very numerous colonies, except such as may be necessary for their military defence, or for aiding in a very important degree the developement of their resources, thereby making them much more productive to the empire.

In respect to the latter description of public works, it must always be a matter of consideration in what cases, and in what manner, the aid can be extended so as to bring the least charge, or (as in many instances it might be, no charge ,upon the mother country. When the desired work is such, that it would certainly

be productive when completed, so as to render reimbursement sure; or when specific and distinct security shall be provided for repayment, then the extending the credit of the mother country would alone be necessary.

Upper Canada has been already greatly favoured by the liberality of the parent state. The Welland canal was assisted by a loan of 50,000*l.*: and the Rideau canal was constructed wholly at the charge of Great Britain. The former work has been for some time completed, and in use, though a large expenditure is required for substituting stone locks instead of the wooden ones, which it was necessary to be content with in the first instance. In its present state, it effectually overcomes the obstructions presented by the Falls of Niagara to the communication between Lakes Ontario and Erie. Four years ago, I think, the number of schooners passing through it with full cargoes, chiefly American, was about 400; it increased three years ago to 600; in the last year it amounted to 800; and in the year 1839 the quantity of business done up to the first of September, equalled the whole amount of the previous year; so that the income derived from it has probably doubled in a twelvemonth. It is clear that under such circumstances, reimbursement though it may be distant, is certain. Welland canal.

The Rideau canal was undertaken while the Duke of Wellington was in office, and with a view chiefly to the military defence of the province. Its value in that respect is apparent. It secures the defence of Canada, up to Kingston, by affording a passage for troops, and military and naval stores, independent of the St. Lawrence; and it remedies the evil of that singular arrangement by which a small streamlet parting from the waters of the St. Lawrence, and coursing around Barnhart's island, was accepted as the main channel of the river; though it is easily fordable by persons on horseback or on foot; and the effect is to bring us almost within pistol shot of what has thus been made the territory of the United States. Rideau canal.

The Rideau canal, besides securing these advantages, lays open an extensive country, from which timber can be trans-

ported; and another important effect of this, and similar improvements in Upper Canada, is to overcome the greatest obstacle to the cultivation of hemp, to any extent that may be desired. The climate and soil are exceedingly well suited to its production; and the canals provide means for its cheap and easy transportation. It is better known here, than in Canada, whether circumstances are likely to make it important to this country, and advantageous to the farmer, that attention should be given there to the culture of hemp. If the demand should be such as to afford a liberal remunerating price, there are scarcely any limits to which the trade might not be extended.

I heard a few months ago a member of parliament taking credit to himself in public debate, for having uniformly resisted every grant for the Rideau canal, and appealing to those around him, whether that had not been his conduct. Within the last two weeks, on the other hand, I have seen an English gentleman, who in returning from Canada to England, had just passed for the first time through this canal, and I heard him exclaim with enthusiasm, that as he looked upon that noble work, he felt pride in the reflection that he was an Engman. It is indeed a splendid monument, not of a nation's liberality merely, but of her forecast. In point of design, material and workmanship, it is second to no work on the American continent; and I think the time is not distant, when it will cause some feeling of regret that the officer who planned it, and with such remarkable energy and spirit, carried it forward to its completion, should have died without receiving some mark of honour from his country. I speak of the late Colonel By.

No doubt the cost of this great work was a large, and inconvenient addition to the enormous expenditure of the British nation; but how infinitely greater would be the charge of defending under less advantageous circumstances, possessions which can neither be honourably nor profitably abandoned. In the American war of 1812, it cost I believe upwards of 500,000*l.*

to build one ship of war on Lake Ontario; the heaviest part of the expense being occasioned by the transportation of her stores, and equipments from Montreal to Kingston; which two points are now connected by the Rideau canal.

Comparisons between the United States and Canada in respect to public improvements.

I am tempted to make here a remark or two on the disposition, which has been sometimes evinced, to hold up Canada as a country in which public improvements are wholly slighted, or else have been in some instances recklessly undertaken, upon the mere view of advancing some petty and private interests. It is true that Lower Canada is rather behind the rest of America in this respect; and from well known causes. The Canadian French have the singular misfortune to be discontented with the very thing for which they have the greatest reason to be grateful, a just and most indulgent Government; while at the same time, unhappily, they are contented in respect to all those other points in their condition where improvement is loudly called for. The Canadian habitans have not that '*auri sacra fames*,' the parent of so much good, as well as of so much evil. They are content to live in no better houses, wear no better clothes, travel over no better roads, and to be no greater men than their fathers; and they are content likewise to raise their oats, and their potatoes, among grass and thistles, all growing together in such equal quantities, that it might be difficult to determine which is entitled to be regarded as the crop. They are a people of few wants; and they contribute therefore little to the taxes, in proportion to their number: a large revenue could not conveniently be raised upon them.

Lower Canada.

But under all disadvantages Lower Canada has constructed the La Chine canal, an excellent work in point of execution, at a cost of more than 100,000*l*., the St. John's railroad, probably at a charge not very much less; and great improvements are making in the harbour of Montreal. These are not contemptible efforts for a colony; and they would have compared creditably enough with those of wealthier countries in America, or elsewhere, in days when the system of proceeding was to do only what could be paid for.

Upper Canada

With respect to Upper Canada; it is marvellous that any contrast should have been drawn, as in some cases it has been, between her and other countries, with the idea of leading to conclusions to her discredit on the score of public enterprise! There have been not a few who have evidently gone out to America, determined beforehand to admire all the practical workings of a system, which they had long been extravagantly applauding in theory. They sometimes extend their excursions in order to visit the Falls of Niagara; and they see as much of our country, as they cannot avoid seeing, in the prosecution of their main design. They pass through Buffalo; and there behold a large and populous town, full of life and business, and exhibiting evident and gratifying proofs of a rapidly growing prosperity. They go to the mere margin of Upper Canada, and see, perhaps, from the window of their inn, a decayed barn or stable, which the owner in the next year will probably replace with a new one. Without travelling into the interior of the province, and enabling themselves to judge of those parts which are there the seats of active industry. they at once employ themselves in drawing gloomy comparisons, and they hint at the proofs afforded of the insufficiency of British institutions to enable this portion of the New World to keep up with her neighbours in the march of improvement. They think of Buffalo, as if it were a picture of all America, and they take it for granted that the scene under their window is a perfect sample of the whole of Canada. They forget the position of Buffalo in the Western world, situated as it were between two great inverted funnels, through the narrow centre of which everything passes from the expanse of the Atlantic States, to the greater expanse of the "far West;" they forget that they might as reasonably complain of its having in thirty years outgrown many a goodly town in England, which flourished before America was discovered; and what is stranger still, they forget, in all their comparisons, that the newly-settled portions of the United States are all parts of one great continent, containing fourteen

millions of people under one government, who can without the delays or dangers of an Atlantic voyage, rush in wherever they can see an opening; in other words, that their main reservoir of men and money lies beside them; and on the other hand they might, we should suppose, remember that Canada receives its extraneous accessions of people and of capital from a reservoir beyond the ocean.

The poor settlers of a new country have enough to do for a few years to maintain themselves. It is only gradually that they become consumers to any large extent of dutiable merchandise. The revenue raised upon such a population cannot for many years be considerable. If spirits could be taxed to the same extent as in New South Wales, a vast increase might be obtained; but any one who knows the nature of the southern boundary of Upper Canada will not require to be told that the collection of such duties would be scarcely possible.

Fifty years ago the province was one vast wilderness. If in the time that has past, the inhabitants, beside clearing their farms, had done nothing more than make the highways, which have enabled them to take their grain to market, and to pass from one district to another, throughout this extensive territory, they could hardly have seemed to deserve much reproach. But besides doing this, they have within the period built numerous lighthouses; constructed expensive artificial harbours; made many miles of Macadamized roads, at an expense probably little short of 200,000*l.*; completed the Welland canal, at a cost of 400,000*l.*; expended 300,000*l.* on the St. Lawrence canal; constructed the Burlington Bay canal; the Des Jardins canal, and the Grand River navigation; and there are other works in progress. They have also made expensive surveys with the view of ascertaining the practicability of further improvements. In addition to these, several important works of a similar description have been successfully carried through by private enterprise; such as the Niagara docks, the Tay navigation, &c.

I cannot, as a native of Canada, refrain from referring here

to the numerous mills and other establishments of a most superior description, for manufacturing flour, preparing timber for market, and for other purposes, which abound in most parts of the upper province. I will instance those at Hawkesbury, at Bytown, at Yonge, Gananoqui, Napane, Peterborough, the Humber, Galt, St. Catharine's, Thorold, Dunville, Flamborough; which are some only of the most extensive, and are such as would reflect credit on the industry and enterprise of any country.

If an intelligent stranger could be suddenly transported to the neighbourhood of these establishments, or into some of the populous and well-cultivated townships of the older districts, he would be astonished to be told that he was in that British colony which it has been the peculiar delight of some British subjects to represent to the world as a country languishing in a state of miserable inaction, and exhibiting, as it would seem their desire to insinuate, a melancholy (though I fear not to them a distressing) proof of the utter incompetency of anything but purely elective institutions to develope the resources of the New World. And it is rather singular that while our fellow-subjects have from some point upon the frontier been shading their gloomy pictures of scenes of British industry and enterprise, which they have not cared to visit, our republican neighbours were, on more than one occasion, holding up the example of Upper Canada, in the spirited and persevering conduct of her public works, as worthy of imitation by their own legislatures and people.

It is a fact that cannot be disproved, though it may happen to be disputed, that no country can be pointed out, either in America or Europe, where so much has been accomplished by so small a population: I mean accomplished upon their own resources and credit, for I leave entirely out of view the Rideau canal, which was constructed by the Parent State: a work, which if it stood alone, might exempt Upper Canada, for many years to come, from the reproach of lying unimproved.

I believe, however, that one may well forbear from vindications of this nature at the present moment. The feelings of indiscriminate admiration of republican institutions which have prompted these unjust comparisons have at last received a check. Undoubtedly, the American people have ever shown, and they daily exhibit a most laudable spirit of enterprise. It has resulted from the characteristics of their race which we share with them; and from the circumstances in which they and their ancestors have been placed. In a boundless field, or rather in a boundless wood, no individual among them seemed to have a defined and settled position in society: there could be no castes, nor anything approaching to castes, such as the competition and necessities of the crowded countries of Europe tend, more or less, to create. All seemed to depend on individual ingenuity and exertion; and as there was a clear field for enterprise, so was there a constant call for contrivance to overcome the difficulties of new circumstances, to smooth paths which had not been trodden before, and to make the least labour produce the greatest possible results. These causes, acting upon the good qualities of the British race, must have formed, and had formed from an early period, a character suited to the situation. The French Canadians were of a different stock, and circumstances turned their enterprise into another channel. Constant struggles with the Indian nations, and the adventurous pursuits of Indian trading carried on from Labrador to the Mississippi, engrossed their energies; and they were, besides, impeded by the disheartening influence of an oppressive and exacting government; an evil which British subjects have not to struggle with in any part of the empire.

But, up to the time of constructing the Erie canal, (which was indeed a noble effort,) there was nothing apparently so superhuman in the public enterprises of the American states as need have made one blush that he was the subject of a monarchy. From that time, indeed, there has been such a developement of the organ of public improvement upon the

national cranium, as has seemed utterly to have bewildered all those theoretical politicians who look only upon the surface of a country's soil for the signs of national greatness.

We know how important an aid was given to the cause by the creation of unnumbered banks, each manufacturing, to a vast extent, what passed for wealth, though it had not been created by the tedious process of labour; and we know, too, that the wisest persons in that country trembled for the unsubstantial nature of the fabric which they saw rising before them. But we also know, that all the amount of confidence and credit which the continent of America could collect within it, was wholly inadequate to produce the magnificent results that followed. The people of that country, therefore, extended their views further, and they resolved, (judiciously enough if they could have stopped at any prudent limit,) to trade upon the stock of admiration of republican energy which they saw was rapidly accumulating in England, imported chiefly by travellers, male and female, noble and simple, who came home and reported that they had visited a country where everything that was touched by a republican turned into gold.

But what seemed rather a mystery is now unveiled, and nowhere is the delusion more unsparingly and convincingly exposed than by the intelligent and right-minded portion of the Americans themselves, who have seen and known the *means*, and feel the *end*.

Nothing can justly deprive the people of the United States of the credit of being a remarkably energetic, active, and enterprising race; each man in his sphere gives striking proofs of these qualities; but the simple truth is, that they had not attained the secret of creating real wealth, by wishing for it, or by talking about it, or by voting in its favour. Running too violently in the race of public improvement, they have been forced to pause. Banks, canals, and rail-roads have suspended, or have been suspended; and no one writing of America, at this moment, can say with accuracy that "*in that republican country no great industrial enterprise ever expe-*

riences a check." During this cessation from bustle, people on both sides of the Atlantic have had leisure to look around them and inquire. The public improvements are there; that cannot be denied; but, upon sober reflection and comparison, it appears that a plain statement of facts will amount very nearly to this—that Irishmen have dug in America an astonishing number of canals, and made a prodigious extent of railroads, which Englishmen have paid for; and when these material ingredients in a public work are allowed for, namely, the labour of constructing them, and the charge of that labour, the balance of merit that remains seems pretty much confined to the ingenuity of the contrivance, and to a vast energy in borrowing, which I apprehend it may be the secret wish of some persons in this country had not been so industriously exerted. Still there is not occasion, I believe, for all the alarm which may be felt in England as to the ultimate result. That the loans will sooner or later be paid can scarcely be doubted. Some of the States will certainly strain every nerve to fulfil their engagements with integrity, and it will be difficult indeed for others to avoid following their example. But it would be well, perhaps, to wait for some diminution of the balance before entering largely upon a new score.

In the mean time, the lesson that has been learnt may prove worth the purchase, if it convinces the great mass of British subjects that, under every form of government, wealth must consist of the gradual accumulation of labour. That whatever has not that foundation may look like wealth, but is not wealth; and that the longer the difference is unobserved the more disastrous must be the effects of the delusion. Paper may indeed represent gold and silver, so long as it may be agreed that it shall do so; and, during that period, it may pay equally well the wages of labour; but the increase of paper-money is not to be taken for the permanent increase of wealth. The growth of wealth in a country must depend on the increased productions of labour for which remuneration has been found in the resources of that country, or in the demand of other countries.

For all beyond there must be a day of reckoning; and any apparent capital in a country which has not had this legitimate source, must either be wrongfully retained there, or it will sooner or later return to that quarter where its true owner resides.

It seems that the greater part of the money which has been expended upon the American railroads and canals was not the fruit of past labour in the United States, but was the accumulated earnings of a greater quantity of patient and enduring industry in England than was ever before applied within the same space of time or surface. So far as the United States is concerned, the enterprise which is to produce it will have been exhibited when the English stockholders are paid, and not before.

If a country, however governed, desires to grow rich, she must expect to do so by the patient labour of her people. "To this condition must we come at last;" and in proportion only as she can do more labour, and to more advantage than her neighbours, can she hope to exceed them in substantial wealth. In this competition, so long as industry is protected by the laws, which is the case now in most civilized countries, the constitution of the individual will be generally a more material consideration than the constitution of the State.

It may be difficult for Upper Canada, if unassisted, to overcome the embarrassment occasioned by her having attempted too much within a short time, and having pushed too far the system of anticipating her resources. The seducing example of her much-applauded neighbours overcame, it must be admitted, the prudence of her legislators, and she certainly is not liable to the reproach of being behind the age in borrowing. It is fortunate she was rather late in taking the infection, and fortunate also, perhaps, that, going into the market with some prejudice against her on account of her inability to produce republican testimonials, she has not been able to indulge her passion for improvement to the utmost limit of her desires.

If what has been undertaken shall be completed and sus-

tained, she will be subject, at least, to no reproach for having accomplished nothing more.

But by way of set off against the public spirit of the legislature of Upper Canada, in effecting such improvements as the Welland and St. Lawrence Canals, very hard things have been said of the corrupt motives, and profligate expenditure of those who have promoted and superintended them. Never, I should think, were such grave assertions made with so little justice, and stamped by such high authority. They could not have been preceded by any competent investigation, because such an investigation would have shown that it was impossible to have maintained them. The Colonial Department, I doubt not, must contain ample disproof of them, and that too the result of most searching inquiries.

The truth is that both these great works, under all the disadvantages attending their construction in a new country, will be found, I believe, to have exceeded their original estimate in a less degree, than the average of great public works of the same kind in this country, where science and experience abound, and where the difficulties could be more easily estimated. I would instance the Caledonian canal and the Birmingham railroad. It is, besides, capable of being shown that the most competent engineers unconnected with the work and with the country, have pronounced that on both the Canadian canals referred to more work has been done for the money expended, than could have been expected, and more in proportion than in similar undertakings in the United States. The directors who have had the management of them well know that the most irksome part of their duty has been to withstand the apparently reasonable claims of the contractors for an addition to prices, which they had found to be inadequate; and they know also that to many of those contractors the employment was anything but profitable, and that none acquired gains which any man need envy.

With respect to imputations of another character, it is painful to speak of them in connexion with the names of those, who had the entire direction of the funds: and who are well known

throughout Upper Canada to be as incapable of anything like peculation, or a corrupt abuse of public duties, as any board that has been formed in England for a similar purpose.

Recent survey.

While on this subject of public improvement, I cannot deny myself the gratification of alluding to a recent survey understood to have been made by order of her Majesty's government, and under the direction of their officers, for ascertaining the expense that would be necessary for opening the Great Western Lakes to navigation by steamers from the Atlantic. To effect this object, it would be necessary to complete the improvements already so far advanced on the river St. Lawrence, and to enlarge the channel of the Welland Canal. What prospect there may be of accomplishing a design so magnificent, I cannot venture to predict; but the very possibility of making at no overwhelming cost, a channel by which large steam-boats may proceed from Quebec into the four great lakes, Ontario, Erie, Huron, and Michigan, strikingly illustrates the truth of what I have ventured to remark upon, namely, the peculiarly favourable position of the British possessions upon the American continent.

Steam communication with Halifax.

For one inestimable advantage already secured, the colonies have reason to feel in the highest degree grateful to the present Government. I speak of the arrangement already made for transmitting the mails to Halifax and Quebec by English steamers. It would be difficult to conceive a measure better calculated to raise these provinces into notice and importance, to improve their social condition, to add to their security, and to make their advantages generally known. When these facilities have been a few years open to the public, the number of intelligent persons who will be led by various motives to visit the British provinces will make things plain that are now only dimly seen, and will supply the mother country with abundance of testimony that cannot be suspected. The inhabitants of the colonies must always be content to be judged of, as they *are*, though they feel it rather grievous to be judged of, as they *are not*.

It is to be hoped, however, that future tourists will not satisfy themselves with paying a visit to the Falls of Niagara, and after spending a few days upon the banks of that beautiful river, with their backs turned upon the whole province of Upper Canada, and their faces directed only towards the opposite shore, imagine themselves qualified to inform their countrymen minutely, and precisely what the province is, and has been; what her Governors for the last thirty years have done, or ought to have done, or wished, or meant, or tried to do, and why they succeeded or failed; or how the last elections were managed; or how much better or worse the whole of Upper Canada looks than the United States; or why an English emigrant, who used to plough his lands well in Sussex or Wiltshire, loses the faculty altogether when he happens to settle on the wrong side of the St. Lawrence.

It is often a subject of lamentation in the colonies, that so little seems to be known in England of their actual condition; but I doubt whether there is any reasonable ground for a complaint on that score. The people of this country, like their brethren in the colonies, probably study those things most, which appear most immediately and directly to concern them; and, after all, I dare say they know quite as much of us as we do of the British colonies in other quarters of the world. Still, unquestionably, this is a branch of knowledge which admits of being better cultivated. A short time ago it occurred to me to examine what the children of the present day are told of us in their school-books, in order that I might find what hope there is of an improvement in the next generation. I happened to refer to what I believe is considered an useful little manual of geography, called "School Geography on a new and easy Plan." It is at all events popular; for it has reached, I see, the fourteenth edition. On turning to North America, I find *Upper Canada* is described as a British province of which the *capital town is Montreal;* and a little further on, we are told of Montreal, that it is *strongly fortified*, and that "its only staple

commodity is furs, besides the skins of foxes, deer, and other peltry produced by their trade with the Indians."

This is pretty much like saying that England is a kingdom of which the capital is Glasgow, a town strongly fortified, of which the staple commodities are seals and red herrings. The truth is, that Montreal, instead of being the capital of Upper Canada, is 50 or 60 miles distant from any part of that province, and is nearly as far from its actual capital as London is from Strasburg; and as to its fortifications, they are somewhat on a par with those of Westminster. About twenty years ago, some furs used to be exported from it, but that trade now passes through Hudson's Bay. There are about 1000 or 1200 ships annually employed in conducting the trade that passes through Montreal, in the cabin of any one or two of which, I imagine, all the "*staple commodity of fur*" might be transported without materially incommoding the passengers. In another part of the same book, we are told, though not as a correction of any previous error, that the trade of Canada is greatly increased; and an account of it is given which is stated to be taken from returns of the year 1812 (27 years ago), a period which, in reference to Canada, corresponds tolerably well, *mutatis mutandis*, with the Norman conquest.

An Englishman, who has spent a week at the Falls, is a little better qualified, (not much,) to instruct his countrymen in the past history and present condition of this interesting portion of the British dominions, than the student of this "Geography on a new and easy Plan."

Lord Durham's Report.

V.—Another object desirable to be accomplished for promoting the security and welfare of Canada, is the counteracting, by whatever measure may seem most effectual, the injurious tendency of the report which was presented to her Majesty by Lord Durham, during the last session of Parliament.

In thus referring to Lord Durham, I would unwillingly fail

to speak of him with the respect due to his rank, and the station which he lately filled.

The strong conviction entertained by the Government of the evil consequences likely to result from the official promulgation of such statements and opinions as are contained in that report, were plainly shown from the regret expressed at its having been prematurely published. All was done that could be done in this country, by persons connected with the colony, for lessening the force of a blow unintentionally aimed, (I trust,) at the tranquillity of a distant possession which, for the common good of all its inhabitants, wanted nothing so much as the restoration of internal peace. The late Lieutenant-Governor of Upper Canada showed, in the clearest manner, how strangely inaccurate the statements were which related to his public measures: the merchants of London connected with the colonies felt themselves called upon to wait in a body on her Majesty's Government, with a public expression of their conviction that that part of the report which respected Upper Canada was founded in error, and was likely to be productive of injurious consequences; and, as an inhabitant of Upper Canada, I did not hesitate to state officially to her Majesty's Secretary of State, immediately upon its appearance, that I was ready, in any place and at any time, to show that it was utterly unsafe to be relied upon as the foundation of parliamentary proceedings. I knew then, and I know now, that the means of refuting the most important statements and conclusions contained in it must exist in the office of the Colonial Department, and could not require even a reference to the colony.

The evils which, it was clearly foreseen, the report was certain to produce, have since occurred, and are displaying themselves daily. It ought to be, and therefore it is just to assume that it is, most painful to Lord Durham to learn the proceedings which have recently taken place in Upper Canada, the principles for which his opinions have been quoted, and the purposes for which his name has been used as a rallying word.

But it must be more painful still to reflect that the whole of the report, in that part which relates to Upper Canada, is most clearly of such a nature that it could only be expected to lead to precisely such results.

That the good sense of the majority of the people will, in time, enable them to triumph over this difficulty, as it has over others, may reasonably be hoped; but it is not unimportant to consider by what means that end could best be promoted. The most just and effectual remedy for the evil would of course be an open public investigation into the principal statements, by order of the Government, and a full exposure of the result. If such an investigation, or in fact any investigation, into the grounds of such statements as I refer to, had preceded the completion of the report, the representations which now appear in it must, one after the other, have been expunged, as being founded in prejudice and error. And, indeed, as to most of them, if Lord Durham would even now state, (supposing that to be in his power,) upon whose, or what authority, such representations were made, I think it probable that, in the opinion of all persons acquainted with Canada, the necessity for any further investigation might, without injury, be waived. It is at least a consolation to reflect that, next to the bringing these statements to the test of truth, the Government has taken the most certain step for mitigating the evil, by providing, as they have done, for throwing a magnificent bridge from England to the British colonies. Such an intercourse as this will lead to cannot last long before many of the representations which the report contains, respecting events and public interests in Upper Canada, would make about the same impression upon the intelligent people of England as the information that their own elections throughout the kingdom were managed and controuled by the Royal College of Surgeons, and that their mails were transported in broad-wheeled waggons.

With respect to the principle recommended by Lord Dur-

ham, under the name of " responsible government," it is not surprising that, notwithstanding the distinct rejection of the innovation by her Majesty's Government, it is still made the ground of so much hurtful agitation in Upper Canada. It has been intimated somewhere that his Lordship's meaning in this respect has been misunderstood. If it be so, it is very much to be regretted that it was explained in language apparently incapable of receiving any other construction than that which has been placed upon it.

I confess I have myself that opinion of the people of Upper Canada that I believe if a majority could reconcile themselves to a short experiment of the practical working of the principle referred to, it might do more than argument towards convincing the incautious lovers of change that they are better off as they are.

This theory of responsible government could hardly, with consistency, be established in one of our colonies only. If it be wise and just, it should of course be extended to all. In many of the West Indian colonies, for some years past, the Government has earnestly desired to obtain from the Assemblies their concurrence in certain enactments for meeting the change that has taken place since the emancipation of the slaves. Their desire has, in some colonies, and for a time, been resisted. Now, upon this principle of responsible government, those executive officers, who, in the legislatures of the colonies, may have supported the measures of the Imperial Government, ought, when they were found to be opposed to the policy maintained by the Assembly, to have been dismissed by the Government.

But to apply the principle to the province for which it was designed. In the published instructions of the Government to Sir Francis Head, taken out by him to Upper Canada, in 1836, it was especially enjoined that, if any of the executive officers serving under him should, in the legislature, oppose themselves to the policy decided upon by the Government, he must of

necessity vacate his office. Now Lord Durham, in his report recommends, among other changes, the following:—First, that in Canada, a small stipendiary magistracy shall be substituted for the justices of the peace, now residing in all parts of the country: secondly, that no sum of money shall be voted by the Assembly for any purpose whatever, without the previous consent of the Crown: thirdly, that the management of all the ungranted lands in Upper Canada shall be exclusively vested in a board to be assembled in England: and, fourthly, that in order to promote emigration, Parliament shall pass an act taxing the wild lands of the people of Upper Canada, and directing the proceeds to be appropriated by the board sitting in London.

Without even intimating an opinion upon the justice and expediency of any, or all of these propositions, I think I know enough of colonies to affirm that no Assembly that ever has sat, or ever will sit in Upper Canada, would have concurred, or will concur in any one of them; that they would never cease to remonstrate against them; and that the carrying any one of them into effect would occasion more real discontent in the province than existed at the time of Lord Durham's visit to it, in respect to all the matters he speaks of, put together. But, if the Government in England should ever adopt these suggestions, they would then become material features in provincial policy; and between the principle announced in Sir Francis Head's instructions, on the one hand, and the responsible Government principle on the other, the officers of the Executive Government would find themselves in this comfortable situation —they might be inclined to say, in the language of the Speaker Lenthal, "We have neither eyes to see, nor tongues to speak, in this place, except as this Assembly shall direct us, whose servants we are." But if they should venture to join a majority of the Assembly, in voting against any part of the policy thus sanctioned by her Majesty's ministers, they must be dismissed for opposing the Government. If, on the other hand, they

should support the propositions of the Government, and should find themselves, as they certainly would, in a minority, they must then be dismissed, or not agreeing with the "*majority of the Assembly:*" in other words, they must be sacrificed, under one of Lord Durham's recommendations for supporting his other recommendations backed by the Queen's Ministers.

Certainly nothing can be conceived more independent than the position of a legislator under such circumstances; for being sure to be dismissed on which ever side he voted, he would be in a situation to exercise the utmost freedom of choice. In the next session, the Governor might renew his attempt, with the advantage of having a "responsible" cabinet against him, as well as his legislature, in his efforts to carry into effect the Queen's instructions.

Occasionally, and I imagine not unfrequently, the Governor having dismissed his council, and crown officers, for having unsuccessfully supported his policy in the Assembly, would exhibit an appearance peculiarly lonely; not unlike a forlorn-looking brig left ashore at low tide. It would soon be felt proper to remove him out of mere compassion; and indeed, without his removal, the responsible government system would be rather a delusion; but still the inconvenience would remain, that the same Secretary of State for the colonies, who sent the debated instructions, would be in office. Other colonies would have an interest in him; and like a title-deed embracing many distinct estates, he could not be treated as if connected with one colony alone. So that, at last, the principle would come to a full stop; for it seems to have been forgotten that to complete the system the colonial assemblies must be able to extend their jurisdiction to the other side of the Atlantic.

I speak of this suggestion in the report in the same sense in which it appears to have been regarded by Her Majesty's Ministers in their public discussion of it. If the meaning has been misapprehended, an authentic correction should be given;

for it is quite evident that in the Province the construction is not looked upon as doubtful.

Future government of Canada.

VI. There are some points connected with the British-American provinces, which seem to be misapprehended by many persons in this country. I mean more especially the possibility of their being retained as dependencies upon the Crown, and the probability of their desiring in time to become an independent nation; or preferring to unite their fortunes with those of the American confederacy. It was my intention, when I began this chapter, to have discussed, (and that very shortly,) these, and one or two other subjects connected with these colonies. But the interest which I naturally feel in their future prospects has led me to touch upon a greater variety of topics, at the risk of being thought tedious by many, who ma y not be induced by circumstances to indulge in similar reflections. My principal object was to discuss the leading points in the bill lately introduced for the future government of Canada, and to examine its details. This I have done in the chapters which follow. I had no idea of offering here, to public consideration, any particular plan of my own as a substitute for that measure, nor do I now intend it. If the bill now pending shall, after full discussion, be adopted, it will only remain to wait with hope the results of a policy which Parliament, I am convinced, will not adopt, unless upon the strongest conviction of its safety and expediency. If, on the other hand, it should be thought prudent to hesitate, then it will seem necessary to discuss and consider whatever variety of propositions the present situation of these colonies, and the desires and interests of their inhabitants may suggest, as worthy of being at least examined and weighed. I will only take the liberty of setting down, in a few words, the several alternatives which, in such a thorough canvassing of the question, may with some advantage receive attention.

1. The plan proposed by the bill which has been intro-

duced—which is to make the two provinces one in all respects, giving to them one government, and one legislature.

2. To unite them for purposes of legislation only, leaving them in other respects as they are (which was the measure proposed in 1822).

3. To give but one legislature to Nova Scotia, New Brunswick, Lower and Upper Canada, which should meet at Montreal, and legislate in all matters for the four provinces.

4. To leave those provinces in possession of their several legislatures; and to create a new legislative body for the four, to make laws in relation to trade, and revenue (not internal), and the improvement of the navigation on the St. Lawrence and Ottawa.

5. To extend the limits of Upper Canada, so as to embrace the island of Montreal, with some of the territory on the opposite side of the St. Lawrence, and all the lands on the south-west side of the Ottawa—to make the added territory a new county of Upper Canada, giving it in all respects the same laws and providing for its representation in the assembly upon a just scale, as compared with the other parts of Upper Canada—leaving the rest of Lower Canada, with, or without Gaspé as may be thought best, to be governed as at present for a limited time, not less than ten years, but under an amended constitution, as regards the composition, proceedings, and powers of the special council.

6. Or, after annexing Montreal, and contiguous territory to Upper Canada, as above proposed, to restore to Lower Canada its Assembly and Legislative Council, so soon as tranquillity shall be perfectly re-established, and an adequate civil list provided for the support of the Government.

7. To leave the territorial arrangement of the two provinces as at present, and to construct a legislative body for the purpose of regulating *trade and revenue,* establishing a civil list, and improving the navigable waters common to both

provinces, leaving to Upper Canada its legislature for other purposes, and restoring to Lower Canada its former constitution, so soon as tranquillity shall be established.

8. To leave the provinces as they are, in respect to territory, to restore to Lower Canada its legislature, taking care first to provide an adequate civil list; and to provide by act of Parliament a mode by which Upper Canada shall propose to the legislature of Lower Canada such enactments as she may desire in relation to trade, and revenue, and the improvement of the navigation common to both; and where Lower Canada shall not concur,—provide for a decision by act of the imperial parliament, on a reference by the two legislatures through the governor-general:—

9. Or, (which I should prefer to the danger of an union,) deal with Lower Canada as circumstances may render just and advisable, and leave Upper Canada to increase her revenue upon imports, by imposing duties and collecting them upon the merchandise which passes her barrier. There are great practical difficulties, (perhaps insurmountable, indeed,) in the way of this latter course (as the papers before the government and parliament in 1822, when the 3 Geo. IV. ch. 119 was passed will explain); but something might be done for overcoming them by proper enactments. It is, however, only to be thought of as a last resource.

Of these suggestions I think I should prefer the fifth, and that the seventh and eighth are the next most worthy of consideration.

They are all, of course, capable of various modifications, upon descending to details.

Whatever may be the determination of Parliament upon the question,—*what provision shall be made for the future government of Canada?* no reasonable man can doubt that the question itself is one of the most important that will be discussed in the approaching session. It would be such if it only affected, as it must do most deeply, the future prosperity and

happiness of the British North American provinces; for it seems not to admit of a doubt that, in the life-time of many persons who are even now of an age to take part in the discussion, these colonies, nay, the Canadas alone, will contain a population greater than that of Scotland. But, to be sensible of the real importance of the question, we must view it in connexion with the general interests of the empire; and we shall then find reason for believing, that none of the measures with which parliament is about to be occupied should be contemplated with greater anxiety than that of which I have endeavoured, in the following chapters, to explain the principles and details.

When a colonist speaks of the value of the colonies to the mother-country, he must expect to be listened to with some degree of suspicion; and he should neither be offended nor surprised that he has this disadvantage to contend against. It is very satisfactory to me, on this account, to be able to refer to an authority not liable to the same exception. In the December number of Blackwood's Edinburgh Magazine, published a few days ago, there is an article entitled, "Colonial neglect and Foreign Propitiation," the object of which is to show the astonishing increase of the colonial trade, and its importance when compared with the trade carried on between Great Britain and foreign nations. There are few, perhaps, who have read it without being surprised at the facts which it discloses. After adverting to the policy pursued by the government since the year 1823, in the hope of increasing the demand for British manufactures upon the continent of Europe, the writer of the article referred to lays before us the results of that policy, and contrasts them with the state of trade between Great Britain and her colonies.

The source from which the information is drawn is perfectly authentic, namely, the official returns made to the Board of Trade, for the year 1836, beyond which period, it seems they have not been made up. From these public documents tables have been constructed exhibiting in one view the value of

British manufactured goods exported to the several foreign countries of Europe, to the United States of America, and to the British colonies, and also the amount in value of such merchandise which is consumed, per head, by the inhabitants of each country, upon an average.

It appears from these returns, that in the year 1836, the value of British manufactures exported to the four colonies of Nova Scotia, New Brunswick, Upper and Lower Canada, was nearly double the value of those exported to Russia, which has a population of sixty millions; and exceeded, by nearly half a million sterling, the whole value of goods exported to France, Spain, Prussia, Sweden, and Denmark; though these countries taken together contain not less than sixty-five millions of people.

It is shown by the same returns that in the year 1836, while the inhabitants of these foreign countries consumed on an average to the following amount per head, of British manufactures, *viz.*:—

The people of	France . .	Eleven pence per head
„	Spain . .	Eight pence „
„	Sweden . .	Nine pence „
„	Denmark . .	Eleven pence „
„	Russia . .	Five pence „
„	Prussia . .	Three pence halfpenny „

the people of the British provinces in America consumed, upon an average, the value of 1*l.* 11*s.* 6*d.* per head: of the British West Indies 3*l.* 12*s.* 0*d.* per head; and of the Australian colonies 11*l.* 15*s.* per head.*

It appears that the value of British manufactures exported in the same year to the United States of America was upwards of 12,000,000*l.*, giving to each inhabitant upon an average about 17*s.*, or rather more than half of the value of goods consumed by each individual in the British American provinces.

* There is an evident error in the table as it is printed in Blackwood, so far as it relates to Portugal. From the data, the average consumption per head would be seven shillings instead of eight pence.

It is a striking fact that Prussia with 14,000,000 of inhabitants takes no greater amount of British manufactures than are consumed in the city of Toronto, and one, or at most two, of the districts adjoining to it.

But a more important difference remains still to be noticed, in comparing the quantity of British shipping employed in conducting the trade with the colonies, and with those foreign countries in which the system of reciprocity is maintained.—It stands as follows:—

	Tons of British Shipping.
France	198,339
Prussia	42,567
Sweden	10,865
Denmark	2,152
Norway	1,573
United States of America	86,383
Total	341,879

Colonies.

	Tons.
British North American Colonies	620,772
West Indies	237,922
East Indian territories	97,034
New South Wales	19,195
Total	974,923

After deducting from the 620,000 tons that portion which belongs to Nova Scotia and New Brunswick, it will be found that the trade with Canada alone employed, in the year 1836, a much greater tonnage of British shipping than the trade with all the six foreign nations above enumerated, including among them the United States of America.

It is further shown in the article to which I refer, that while the shipping of Great Britain and Ireland has declined in the last five and twenty years, that employed in conducting the trade with the colonies has more than doubled.

"More decisive evidence cannot be imagined of the vital

importance of the colonial trade; not only to our commercial wealth, but to our national existence; and if any one after the facts that have now been stated remains blind to our true national interests, and the quarter from which we must look for our wealth, our security and independence in future times, I say neither will he be converted though one rose from the dead."

"For fifteen years past our whole commercial policy has been directed to the object of gaining a more ready vent for our manufactures into the continental States of Europe. We have concluded no less than twelve reciprocity treaties with the principal powers; and in order to propitiate their good will, we have sacrificed by our treaties all our commercial advantages, at least in our intercourse with those States. And what has been the result? Why, that our commerce with them is a perfect trifle, when compared with that which we maintain with our own colonies. And that while the Old States take off a few pence per head of their population, our colonies take off as many pounds. In this instance we have truly verified the old adage, that we have been penny wise and pound foolish, even in regard to our existing interest at the moment. But when, in addition to this, it is recollected that these colonies are part of ourselves, distant provinces of our own empire, whose blood is our blood, whose strength is our strength; that they are increasing in numbers with a rapidity unparalleled in the annals the world; and that however fast they may augment, they are, by their situation and circumstances, chained for centuries to agricultural and pastoral employments, and consequently our export trade with them must increase in the same proportion as their numbers; while, on the other hand, the States of continental Europe are increasing far less rapidly in numbers, are actuated for the most part by commercial or political jealousy, and may any moment become our enemies, it may safely be affirmed that the neglect of the colonial provinces to propitiate foreign powers is, of all human absurdities, the most absurd."

This is the language, not of a colonist, but of Mr. Sheriff

Alison, in addressing a public meeting on a late occasion in the city of Glasgow. It is cited in the article in Blackwood's Magazine to which I have referred; but it should not be adverted to without remarking that the British provinces in America have been, and are at this moment highly favoured by the existing regulations of trade respecting their principal productions—and that to these regulations it is owing in a very considerable degree that the comparison which has been made is so greatly to their advantage. Still the results of that just and natural policy are no less gratifying to witness, and we cannot contemplate them without being forcibly struck by the consideration how much more might be done for improving and strengthening those possessions of the crown, and for increasing their value to the parent state: I mean by commencing a system of colonization on an extensive scale, as a great measure of national policy, and by turning their natural advantages to account by such assistance and encouragement as would make them speedly productive.

EXAMINATION

OF THE

PROPOSED MEASURE

FOR THE

FUTURE GOVERNMENT

OF

CANADA.

Nec mos bellantes unâ stabulare.—GEORG. III.

I cannot, perhaps, adopt any method more convenient for making the whole subject intelligible to those who may not have had much previous acquaintance with it than by proceeding, 1st, to state, in a form somewhat more condensed than the bill, the details of the proposed measure; 2ndly, to point out the principal changes which the bill would introduce into the constitution and government of the Canadas, and to discuss their expediency; 3rdly, to examine how far the bill is judiciously framed for accomplishing the objects proposed; which will lead to a consideration of its several clauses in detail, and also to some remarks upon the absence of enactments in the bill in respect to some objects which it would seem necessary to provide for, in the event of any measure of the kind being adopted.

A copy of the bill, as printed by order of the House of Commons, shall be subjoined in an Appendix, in order that a reference may be conveniently made to the clauses cited.

EXAMINATION,

&c. &c.

CHAPTER I.

Statement of the provisions of "The Bill for reuniting the Provinces of "Upper Canada and Lower Canada, and for the Government of the "United Province," as prepared and brought in by Lord John Russell and Mr. Labouchere, and ordered by the House of Commons to be printed, on the 20th of June, 1839.

[I have given this summary of the provisions of the bill, omitting the technical language, in the hope that the effect of the measure will be in general more conveniently discerned. No numbers are affixed to the different heads in this summary, for fear of producing confusion in the references. Whenever particular clauses are cited, the reference is to the bill itself, as printed in the Appendix.]

OBJECTS OF THE BILL.

It seems to be intended to unite the Provinces of Canada, to all intents and purposes, so that, hereafter, they shall compose but one province, to be called "the United Province of Canada," having but one Executive Government, and one Legislature, which shall meet for the first time in the year 1842:—

To annex to the province of New Brunswick the following portions of Lower Canada: namely, the district of Gaspé, and the islands of Madelaine, commonly called the Magdalen Islands:

To divide the United Province of Canada into *five districts*, excluding from those districts the cities of Quebec, Montreal, and Toronto, and the town of Kingston:

To provide for establishing the boundaries of these districts, after the passing of the act, by the determination of four arbitrators and an umpire, for whose appointment and duties the bill makes provision (see clauses 58 to 65 inclusive):

To subdivide each of these five districts into *nine electoral divisions*, with a view to the election of members of the House of Assembly—making forty-five electoral districts in all; and giving to each of them two members—in all 90

Giving also to Quebec, Montreal, Kingston, and Toronto, two members each - 8

Making the first Assembly under the act to consist of - - - - - - 98 members:

These forty-five electoral divisions are to be formed and bounded by the award of the same arbitrators who are to form the five districts:

The bill gives a general instruction to the arbitrators to form the five districts in such a manner as to make the number of electoral divisions in Lower Canada as nearly as possible equal to the number in Upper Canada; and they are also instructed that, in forming the *electoral divisions* (that is, in subdividing each district into nine parts), they are to have regard, so far as is practicable, to the manner in which the representation has been proportioned in Upper Canada by the provincial statute 60 Geo. III.:

It provides that the Legislature of the United Province may hereafter alter by their acts the boundaries of districts, or of electoral divisions:—

That Her Majesty may appoint the members of the Legislative Council, and may also delegate to the Governor of the United Province the power of making appointments,

from time to time, subject to such instructions as may be given to him:

That the Legislative Council shall never consist of less than *twenty* members; and that *five* shall form a quorum: that the members shall hold their office for *eight years* only, but that they may be reappointed: they may resign their office; and shall forfeit it by becoming bankrupt, or insolvent, or compounding with their creditors, or by being attainted of treason or felony:

That the laws now in force in Upper Canada respecting the time of holding sessions of the Legislature, the proroguing the session, and the dissolving the Legislature, shall apply to the United Province, *until the Legislature of the United Province shall make other provision;*

And the laws now in force in Upper Canada respecting the holding an annual session of the Legislature, or the continuance of the assembly, or the qualifications necessary for the electors, and for the elected, shall extend to the Legislature of the United Province:

That the Governor shall appoint a returning officer for each district, who shall appoint under him a returning officer for each of the electoral divisions in his district: but these matters are subject to future regulation by act of the United Legislature:

That the Legislature of the Province may pass such acts as they may think proper, respecting the number of members to serve in the assembly;

Or the time and place of holding the sessions of the Legislature;

Or the prorogation or dissolution thereof;

Or the continuance of the Legislature (that is, the duration of each Provincial Parliament);

Or the qualifications, or disqualifications of voters, or of persons to be elected;

Or the summoning the *Assembly*, (meaning the *Legislature*,) for the dispatch of business;

Or respecting the oaths to be taken by voters or by members of the Assembly;—

With this restriction, that every bill respecting the place and time of holding the sessions of the Legislature, or the proroguing the session, or dissolving the Legislature, or the continuance of the Assembly, shall be reserved for the signification of Her Majesty's pleasure, and shall not be assented to until thirty days after it shall have been laid before both Houses of Parliament:

That the Assembly may elect their speaker, and may remove him by their vote:

That *twenty* members of the Assembly shall form a quorum:

That any bill affecting, not the whole province, but only some part thereof, or purporting to alter or abolish the tenure on which lands are holden, or providing for any change in the language in which justice is to be administered, or affecting the celebration of Divine Worship, or any other religious observance, or any existing institution for the maintenance or advancement of education, or religious instruction in any district, must be reserved by the Governor for *twenty-one* days, at least; and if in that time the district council of any district to be affected by such bill (which district councils are new elective bodies proposed to be created by this bill) shall request the Governor to reserve such bill for the signification of Her Majesty's pleasure, then such bill shall be reserved accordingly; and it shall not be assented to by Her Majesty until it has lain for thirty days before both Houses of Parliament.

That in each of the five districts there shall be a *Representative Council,* to be called the "District Council," to consist of twenty-seven members, to be first summoned in the year 1842, and to be chosen under instructions to be sent to the returning officer for each district.

These twenty-seven members shall be composed of three members to be chosen from each of the nine electoral divisions within the district; the elections to be holden by the returning-officer of each electoral division, in the same manner as elections for members of the Assembly; the qualifications, and disqualifications of members and voters shall be the same as for the Assembly, and also the oaths to be taken by them.

That persons chosen to these councils must serve or pay such fine, not exceeding £25, as the district council shall by any ordinance appoint, but no person shall be obliged to serve who shall be disabled by permanent infirmity of body or mind, or shall be sixty-five years of age, or shall have served before in the office, or fined for it within five years.

That in each year *nine* of the twenty-seven members shall go out of office, according to the rotation prescribed; but those going out may be immediately re-elected, and an election is to be held annually to supply vacancies.

That these district councils shall have quarterly sittings on days which they shall appoint, and may have other sittings upon notice, to be regulated by ordinance of the council.

That the council may elect a chairman, and may remove him.

That ten members may form a quorum, the chairman to have a casting vote.

That the District Councils shall have power to make ordinances for maintaining and regulating a system of police within the district, for paving and lighting towns, for making, maintaining, or improving any new or existing road, street,

railway, canal, or other means of transit, or for the stopping up, altering, or diverting any such road, street, railway, or canal, and for any other purpose or matter which shall be specially subjected to their direction and control by any act of the Provincial Legislature.

That the district councils may, for any of the above purposes, raise a revenue by tolls, &c., on the works, or by taxes on real and personal property; and may also impose taxes, and may apply the funds "towards the payment of all necessary expenses incurred, or estimated as likely to be incurred, for the current year in respect to the local government of the district, either on account of the lawful expenses of returning officers at elections of members for the district council, or *the salaries of officers, or otherwise howsoever.*

That the council may by ordinance appoint a clerk of the council *and a treasurer of the district,* with such salaries as they may think proper; and they may in like manner remove these officers.

That any ordinance of these councils may within two months be disallowed by the Governor of the province; but unless and until so disallowed shall have the full force of law. But no ordinance shall be valid, if repugnant to any act of the Provincial Legislature, *or if it impedes the full operation of any such act.*

That the Provincial Legislature may by act alter the number of members of the councils, or the mode of summoning them, or the regulations respecting their elections, or the qualifications of members and voters, or their oaths, or the expense of elections, or fines for not accepting, or regarding vacancies, or the meetings of the councils, or the appointment or duties of officers.

That the revenues in both provinces, which are now subject to appropriation by the respective legislatures, shall form one consolidated fund.

That the same five arbitrators who are to be appointed for other purposes under this act shall before the 29th of September, 1842, determine what constitutes *general revenues* of the provinces, *or either of them,* applicable to the general public service thereof; and what part of the revenue is derived from local *rates* and *assessments,* or may be appropriated to any local purpose. And the latter shall not form part of the consolidated fund of the United Province, but shall continue to be raised and applied as before, subject to any act of the legislature, or to any ordinance of the district councils authorized to be made by this act.

That the debt of the province chargeable on the general duties, &c., shall be charged against the consolidated fund.

That the same arbitrators shall ascertain what civil list, at the time of passing this bill, is payable by law, in each province, and the appropriation thereof; and such charge when ascertained shall, after 1st January, 1842, form a permanent charge on the consolidated fund, and shall be appropriated permanently as a civil list, for the maintenance and support of the aforesaid public officers, and their several departments, and shall be appropriated accordingly by the Governor, acting under the authority of the Secretary of State.

That the consolidated fund shall be charged with the expenses of the arbitration, and of the elections of members of the Assembly, which charges shall be subject to be reviewed and audited, agreeably to any act that may be passed by the Provincial Legislature.

That the civil list shall form the first charge on the consolidated revenue, after expenses of collection have been defrayed, and *the interest* of the public debt shall be the next charge.

That the residue of the revenue shall be appropriated by the Legislature, for the public service, as they shall think

proper: but all money bills must originate in the House of Assembly;

And no bill shall be introduced for appropriating any part of the consolidated revenue, or of any other tax, or impost, to any purpose, which shall not have been first recommended by a message of the Governor to the Assembly, in the same session.

That the determination by the arbitrators of all matters referred to them shall be sent to one of her Majesty's Secretaries of State, and be submitted to her Majesty in Council; and if allowed, shall be binding and have the force of law; but there can be no allowance until thirty days after the determination shall have been laid before Parliament.

That this act shall not authorise the provincial legislature to affect or vary any of the terms of capitulation, in respect to religious worship, or the temporal rights and privileges of the ministers of religion, or any of the spiritual or temporal rights or privileges of the clergy of the Church of England and Ireland, or of the ministers of the Church of Scotland, or of any other religious profession:

Except that the Legislature may legislate respecting the maintenance of religion, and the clergy reserves, as the separate legislatures of the provinces might now do; but under the same restrictions.

The laws of each province are to continue in force, as they may stand on the 1st January, 1842, except where they may be repugnant to this act, until repealed or altered by the new Provincial Legislature.

And anything authorised by this act to be done by the Governor of the united province, with a view to the constitution of the Legislature of the united province, or otherwise with a view to the union of the provinces, her Majesty may by instructions authorise to be done by the Governor-general of the two provinces, at any time before their Union.

CHAPTER II.

Statement and discussion of the material changes which such an Act would make in the Constitution and Government of Canada:—1st. The Uniting the two Provinces.—2nd. Alterations in the Constitution of the Legislative Council.—3rd. Institution of Elective District Councils.—4th. New Powers proposed to be given to the Colonial Legislature.

ANY one acquainted with the present constitution of the Canadas will at once see that the most material changes which the proposed Act would introduce are the following:—

Principal alterations which such an Act would effect.

1st. It would make one province of the two, to all intents and purposes, giving to the whole of Canada one government, and one legislature.

2ndly. It would introduce into the constitution of the Legislative Council (the Upper House of the new legislature) some novel principles in government, not only unknown to the constitution which each province has enjoyed under the British Statute, 31 Geo. III. ch. 31, but equally unknown in any other colony or country.

3rdly. It would create in Canada (not only in Lower Canada, but in the Upper Province where no such institution has ever been desired, or thought of) a number of elective councils, not for the municipal regulation of towns, but extending their government over the whole territory; each of which councils would have power, within its district, to raise any amount of money by taxes, and to appropriate it to certain public objects; and also to regulate the internal interests of the district in several important particulars. They would, moreover, be invested with a very important control over the

proceedings of the Provincial Legislature—and would have power of appropriating the local rates and assessments which are now raised by law in either province.

4thly. The new Colonial Legislature would have power to alter certain principles of their constitution which, in respect to Canada, as well as other colonies, have been hitherto unalterably fixed, or which, more correctly speaking, have been subject to alteration by the Imperial Parliament only.

There are some other changes of less consequence, which will be noticed in examining the details of the Bill.

Union of the Provinces.

I will now speak of these four leading objects of the Bill, in their order, beginning with the "*proposed union of the provinces,*" which, as it lies at the bottom of the whole measure, I shall not affect to treat with greater brevity than is consistent with a full understanding of the subject.

Legislative union proposed in 1822.

It is well known that this is not altogether a new project. The idea of giving but one legislature to the two provinces of Canada was seriously entertained in 1822, when the present Sir Wilmot Horton, then Under Secretary of State for the Colonies, brought in a bill for that purpose, which went into Committee, and on the 24th of June, 1822, was printed by order of the House of Commons. It was opposed by Sir James Mackintosh and others, principally on the ground that the inhabitants of Canada had no knowledge of the intention to propose such a change in their constitution; and the opposition being strenuous, and the Session near an end, it was for the time abandoned; but with a determination, expressed on the part of the Government, to bring the measure again forward in the following year.

Design relinquished in 1823.

It was never afterwards pressed, however. The Assembly of Lower Canada had, in the mean time, sent delegates to remonstrate; and these came to England charged with petitions against the Bill, which were very numerously signed by the French population. The British inhabitants of Lower Canada

very generally desired the Union, and had sent an agent to promote their views. In Upper Canada opinions seemed to be much divided; and the Legislature took no decided part. On the view of matters, as they then stood, the Government resolved to abandon their measure, which, speaking with much deference, I think it was unwise ever to have proposed.

Remarks upon the attempted Union (in 1822).

It is true that for many years there had been a great want of cordiality between the Assembly of Lower Canada and the other branches of the Legislature: the Government had been most unreasonably opposed; the means necessary for carrying on the public service had been withheld; and the proceedings of the Assembly, and the language of the leaders in that body, (who it is just always to bear in mind were not all of them French Canadians,) had tended strongly to cherish a spirit of bitter hostility against the Government, and were in fact spreading rapidly and widely among the people feelings of jealousy and suspicion, equally fatal to their interests and to their peace.

To the progress of these evils it was most desirable that a check should be imposed; and the British Government of that day were led to believe that a remedy would be found in a legislative union of the provinces. They probably hoped, also, that such an union would lead gradually to the introduction into Lower Canada of English laws and institutions, in the place of those of foreign origin, from which the British portion of the population have been always anxious to be delivered; and not without good reason. There can be no doubt that the motives of the Government in proposing the measure were the best possible; and whether they were driven from it solely by the opposition which had been raised, without having in any degree changed their own opinion, could not, perhaps, be very clearly ascertained at present, if it were material to know. But I believe there have been few observant and reflecting persons in Upper Canada who have not, in the mean time, seen reason again and again to rejoice that the project was given up.

In the interval which has elapsed, the result of three general

elections in Upper Canada has, from time to time, placed the representation of that province, with all the influence over the public mind, and all the control over the Government which it confers, in the hands of a party whose leaders have shown unequivocally their disposition to support and encourage to the utmost the Assembly of Lower Canada in their unpatriotic and fatal course.

I need not do more than advert in a single sentence to the recent history of these two colonies, and refer to the records which the printed journals of the Assembly of Upper Canada contain of the sentiments and proceedings of that body with respect to the political movements in the lower province, at a moment when the people of that colony were on the very verge of rebellion. How far it would have tended to maintain the connexion of these provinces with the Crown, and to preserve in them those institutions which are wisely valued by the intelligent and loyal, if the leading politicians in the Assemblies of the two provinces had been actually combined in action, as they were united in feeling, it is not difficult to judge.

It has been a misfortune of the British North American Colonies, which their loyal inhabitants have deeply felt, that their popular assemblies, liable like others to frequent fluctuations in character and feelings, seem to have been considered as speaking the sentiments of the great mass of the people, whenever they have used the language of fierce defiance, of suspicion and discontent,—and at such times only. And looking back upon the past, no one can venture to say with confidence what degree of firmness might have been shown in resisting the clamour and threats of an united assembly, assuming to speak in the name of the whole of Canada, and capable, if their desires were not gratified, of involving both provinces in the same perplexities which had so long prevailed without relief in one of them.

I believe that England, no less than the colonies, has reason to congratulate herself that the experiment of an union was not made in 1822. And I believe also that it will be admitted,

by those who have had the best means of judging, that some injury followed from the attempt to make the change referred to in the political condition of the Canadas.

The numerous priesthood of the Lower Province, who are dispersed everywhere among the French population, throughout the country as well as in the towns, were naturally alarmed at what they supposed to be a blow aimed at the national institutions and predilections to which they owed their influence, and which they may sincerely have imagined to be essential to the happiness and safety of the people. If these ecclesiastics had been as enlightened, as I believe they were in general religious and moral, they would have known that under the British Government, and in this age, to dread the civil or religious persecution of a whole people is to fear an imaginary danger. But their position exposed them to be easily misled. It was not difficult for the popular leaders among their countrymen to inspire them with alarm, and thus to secure their co-operation. And it was no less easy for the priests, who have always had deservedly much influence with their flocks, to make the same alarm universal among them, producing a community of feeling and purpose not dishonourable, as it regarded the motives from which it sprang, or the defensive objects to which it was at first limited, but certain to become, as it has become, under the guidance of ambitious and wicked men, the cause of infinite evil and suffering to the people themselves, and of great mischief to the empire.

By those who are resolved to make all argument and all experience bend to the conclusion that an union of the provinces will bring peace and security, it may probably be remarked that the intended measure having been abandoned, and not carried, the result has been a rebellion in both provinces; and they may ask, What worse consequences could possibly have followed from the proposed union? But the answer is not less obvious. It is true that there has been a formidable rebellion in Lower Canada, but not because the Government failed to apply the suggested remedy of the union; the security against

such a misfortune lay in measures of another kind, much more easy of adoption, and much more certain in their effect. It is true also that there was a rebellion in Upper Canada; but it was the movement of an inconsiderable minority of the people, a movement contrived and conducted by those very persons whom a union would most probably have placed in the united assembly, where they might have found themselves and their schemes in the ascendant. The great mass of the people of Upper Canada, to which country their sphere of action and of influence was happily confined, not being committed to the treasonable designs of the other province, but seconding and supported by a loyal legislature, drove from their land the reproach of treason, in a spirit which gave confidence to the mother country and to her other colonies, and which showed the disaffected in Lower Canada that their cause was hopeless.

Those who really think that worse was not likely to have happened under other circumstances, have either not enjoyed the necessary opportunities for forming an opinion, or they have profited little by them. Such of the inhabitants of Upper Canada as have witnessed the occurrences of the last fifteen years, and who have property there, which they can only consent to enjoy while they can hold it with their allegiance, will be inclined to pursue these reflections further.

Idea of union not resumed till May, 1839.

The design of uniting the provinces, or rather of uniting their legislatures, being formally abandoned in 1823, does not seem to have been resumed by the Government up to the time of the rebellion in 1837; nor, so far at least as the public had any knowledge, until the Royal Message was sent down at a late period of the last session. So far from it, indeed, when Lord Gosford and his colleagues had closed their inquiries, and the two houses of the Legislature in Upper Canada, ignorant of the measures which the Government might be induced to take, united in an address to his late Majesty, expressing their hope, that an union of the provinces would not be ventured upon, they were most promptly answered by an assurance from Lord Glenelg, then Secretary of State, that

In April, 1837, the Secretary of State had

"His Majesty had commanded him to observe, that the pro- assured the Legislature of Upper Canada that it was not contemplated.
"ject of an union between the two provinces had not been con-
"templated by his Majesty *as fit to be recommended for the*
"*sanction of Parliament.*"

This was in the month of April, 1837, when Lower Canada was seen to be fast verging to that state of anarchy which compelled the British Legislature to suspend its constitution—a constitution so just and liberal in its principles, and so wisely and carefully framed, that it is hardly possible to contemplate it as it stands upon the statute-book, and to consider, at the same time, the ease and the success with which it has been perverted to the most mischievous and oppressive purposes, without coming to the conclusion, that either the generous nation which granted it must, from a mistaken indulgence, or an unfortunate want of confidence, have failed to give it their firm and constant support, or that it was a constitution too liberal to be combined, in a distant possession, with almost universal suffrage, and a population that had but lately been foreign.

In justice to the framers of that beneficent and free constitution, I will not refrain from expressing my own conviction, that, unfavourable as circumstances have been in Lower Canada, it might, without difficulty, have been sustained there, affording to all classes the protection and happiness which it is so well calculated to confer; and I believe this opinion to be almost universal among the British inhabitants of Canada.

But it has perished in the strife of parties; and, while it is quite certain that it will not be replaced with a better, it has become a matter of necessity to find some expedient for escaping from the present difficulty.

After long hesitation, the ministers of the crown, so lately as the month of May last, seem to have made up their minds to resort to the project of an union. That the decision has not been adopted with a very satisfactory degree of confidence may be inferred from the delays and difficulties which preceded it. It must rather be looked upon, I think, as the one among many Introduction of the present measure.

expedients which has been thought by the government to be, on the whole, the least unpromising.

That it has been recommended to Parliament, with an anxious hope that it may contribute to the welfare and safety of the Canadas, I do most sincerely believe; and if in Parliament, or among the whole body of public men in these kingdoms, there be any individuals who do not partake of this feeling, they are, both in number and importance, too small to be spoken of. For I am persuaded that an anxiety to place the security and tranquillity of the British North American Colonies out of danger, prevails universally with all the sound population of the mother country; and if there be a single question upon which public men would most willingly free themselves from the restraints of party, and look only to what is best to be done, I believe it is this question, respecting the future government of Canada.

A growing conviction of the value of these colonies, and of the others upon the same continent, which will be more or less affected by the decision; a warm approbation, and, I may say, a pride in the conduct of their loyal inhabitants under circumstances of great trial; and the encouraging conviction which has been late in forcing itself upon the minds of the people of England, that there is in these provinces a sincere desire, and a firm resolution, to abide by the fortunes of the British empire, have all tended to produce the feeling which I have described.

Whether the measure of uniting these provinces will, or will not, be the best thing that can be done for them, is the question which it may be expected statesmen of all parties will honestly ask themselves; and if an error shall be committed in disposing of this great question, which must soon be brought to a decision, it will assuredly be an error of the judgment—it will not be the effect of indifference, and still less can it spring from any ill intention.

Impressions of many at first

I have observed that some persons in this country, who

professed not to have thought deeply upon the matter, had readily taken up an impression in favour of the union, as if the good policy of uniting the two provinces were in a manner self-evident. But I have met with very few, I can scarcely say with any, who, after a short discussion of matters which had escaped their attention, but which it is indispensable should be considered, did not seem as readily to recede from that opinion which they admitted they had hastily formed. sight respecting the union.

It may, indeed, at first sight appear to be a natural process of reasoning to conclude that, as so many evils are supposed to have followed from dividing Canada, by the Act of 1791, the surest and simplest remedy must be to unite the provinces again. I have heard that argument used in public debate; but it is not a safe method of reasoning, and especially in affairs of government, to conclude that you may always get out of difficulties by simply reversing the proceeding which got you in. A man may contract a pleurisy by imprudently throwing off his clothes, but he will not remove the disorder by again putting them on. Division of Canada in 1791, a just and necessary measure;

But though it must be confessed that the deduction is not a sound one, the fallacy is even greater in respect to the premises; for there is nothing as I conceive more groundless than our imagining that because the French Canadians, having become numerous, have also become troublesome, therefore the dividing the province of Quebec must have been a political blunder, to which all subsequent disasters are to be imputed. The ministers of that day have not left behind them the reputation of being rash and speculative, nor were they habitually careless and inconsiderate; and Parliament, it must be acknowledged, contained at that period a good share of members who were not destitute of judgment.

The division of Canada into two provinces was, on more accounts than one, a measure of absolute necessity. In the year 1791, when it took place, the agricultural settlements which had been formed in the upper part of the province by disbanded soldiers and American loyalists had become con- required for the convenience of the inhabitants.

siderable. Some thousands of people had spread themselves over the district of Niagara, and over lands still more remote from Quebec, particularly in the western district. Between these new settlements and the country upon the St. Lawrence there were large tracts of wilderness intervening, which the Indians still held as hunting-grounds, and through which there was no road whatever in the year 1791, when the Act was passed, nor for some years afterwards.

The mail from Quebec found its way into this region but once or twice, I believe, in a twelvemonth; for it was, in fact, only capable of being traversed by Indians and hunters, or by persons as active and hardy as they. The common way of travelling from the upper country, to and from Montreal and Quebec, was through the lakes and rivers in the summer season; and the passage was, in point of inconvenience, more formidable, and frequently occupied more time than the intercourse between Toronto and London, at the present day.

It is quite obvious that, under such circumstances, justice could not be administered, nor any of those objects of society attained which require the intervention of the civil power, for the seat of government was nearly as distant from some of these settlements as Copenhagen is from Rome.

If Canada had even remained a mere military government, it could not have continued undivided, without an utter disregard of the convenience and interests of the whole upper portion of it, which, while it was in the rapid progress of settlement, required to have at hand the various departments of government, and especially those connected with the surveying and granting of land. But when Parliament determined, as they did in 1791, to bestow a representative form of government upon the colony, the gift would have been little more than nominal so far as Upper Canada was concerned, if it had not been accompanied by a division of the territory. All who remember the difficulties with which even a journey to Toronto from the western district was attended fifteen years afterwards will have little doubt of this.

But if there had not been these resistless reasons for dividing the province in 1791, that measure was upon other grounds highly reasonable and proper. It is well known that, although the law of England had been introduced into Canada after the conquest, and had continued for some years in force there, yet the British Parliament, by the Act of 1774, expressly restored the ancient law of Canada, and made it "the rule of decision in all controversies relating to property and civil rights." No Englishman can doubt that, if this step were necessary, the necessity was unfortunate; but at the same time no one conversant with the history of that period can be at a loss to conjecture for what reasons that statute was passed.

Necessary also on other grounds.

At all events the thing was done; and in 1791, when Parliament again applied themselves to the regulation of the Government of Canada, with the view of conferring upon it a more liberal Constitution, the French Canadians had been living for seventeen years in the enjoyment of their restored laws.

At that moment the fertile territory which now composes Upper Canada was in the course of settlement, not by French Canadians, but by people who had all their lives been accustomed to English laws. It would have been absurd and unjust to have subjected these without necessity to the inconveniences and disadvantages of laws and customs to which they were strangers, and to which it was most unlikely they would be reconciled by experience.

On the other hand, to have had two codes of law in one province, or to have made a distinction in the administration of justice between suitors in the same court, would have been absurd and impracticable. It was to avoid these difficulties that Canada was divided into two provinces, in order that the French Canadians, who were settled in the one portion of it, might continue to live under their peculiar laws, which Parliament, whether wisely or not, had restored to them in 1774; while the British settlers, who were pouring themselves rapidly into the other portion, might enjoy a system better suited to

Unfortunate inadvertence in fixing the time of separation.

their habits, and much more likely to promote their welfare. The course was extremely natural and just, and was, in fact, the almost necessary consequence of the restoration of the French law, which had been the act of other ministers. It is nevertheless deeply to be regretted that, for the purpose of including in Lower Canada the whole of the French population, the line of division was carried up the river St. Lawrence to that point where the old settlements terminated, and where the English settlements commenced, or about sixty miles above Montreal, to which town and no farther the St. Lawrence is navigable for ships; thus excluding Upper Canada from the free enjoyment of a sea-port.

The division of the province has been in fact highly beneficial to Upper Canada, and has not been the cause of the present political evils.

That was an error in the details which an ignorance of the geography of the country at that early day may, perhaps, account for. But I cannot see with what degree of justice those who administered the government of this country in 1791 can be said to have acted unwisely in having divided that immense province; nor do I think the assertion less unreasonable, which I have heard not unfrequently made, that to this division of the province may be traced the evils which are now experienced.

In 1791, when that step was taken, Upper Canada contained 10,000 inhabitants. Fifty years have not yet elapsed, and her population has increased to about 450,000. Having a civil government and legislature at a point in the province nearly central, and as accessible to all parts of it as the state of the communications in a new country would permit, and having also the full enjoyment of British laws and institutions, her progress with regard to trade, revenue, cultivation of the soil, construction of public works, and the advancement of civil institutions, may compare with any that the British empire has exhibited in any part of her dominions within the same period, or, I think I may add, at any other.

Let the inquiry be sincerely made whether such would have been the state of things in this part of Canada, if it had con-

tinued to form a portion of the undivided province of Quebec, with the legislature essentially French, and the laws French, and with the public departments of the government inaccessible except by a journey occupying weeks, and over roads which even now are at some seasons of the year scarcely passable.

One can only speak of what might have happened in the language of conjecture; but I believe the difference would have been, that the evils which have checked the prosperity of the Lower Province would in that case have extended equally to the Upper; and that in the year 1812, when America declared war against England, that finest portion of Upper Canada which lies to the westward of Toronto, and which at that time was regarded in Lower Canada as almost *terra incognita*, would have been quietly walked over by General Hull and his army; and before Sir George Prevost and tho Government at Quebec could have been awakened to a sense of the danger, it would have been found in the occupation of some thousands of the people of the neighbouring States.

I should be surprised to find that there is a single inhabitant of Upper Canada, of much reputation for intelligence, who has a doubt upon this point, whatever views he may have brought himself to entertain in respect to the propriety of an union at the present time.

It is about two hundred years since the French made considerable settlements in that part of the colony which is now Lower Canada: its present population is computed at 650,000. Upper Canada began to be inhabited by white people only about fifty-five years ago, and its population is believed to be not less than 450,000.

It will appear from these facts, I think, that if an union at the present moment can be shown to be an advisable measure, it can hardly be because the separation in 1791 was either unnecessary or unwise. On the contrary, I believe it to be to that separation that Upper Canada mainly owes her rapid advancement. And if in Lower Canada a proportionate progress has not been made, it has been owing partly to diffi-

culties which "neither laws nor kings can cause, or cure," but mainly to political disadvantages which, far from being removed, or even certainly diminished by retaining the colony undivided, would undoubtedly have extended their depressing influence throughout the whole territory.

They would have held in comparative thraldom a most fertile and interesting country, which, being delivered from the restraint, has sprung forward with surprising rapidity from a perfect wilderness to be one of the most valuable possessions of the crown.

Question is whether an union may not now be expedient.

But admitting it to be fortunate, as I have no doubt it is, that up to this time the present provinces of Canada have been under separate governments, still the Imperial Parliament will be called upon to consider, when the *Bill* comes before them, whether it will or will not be for their mutual advantage that they should now be united. The final discussion of this question in Parliament will be a most important era for those Colonies. If Parliament shall come to a sound decision, as they will sincerely desire to do, the application of a just, firm, and temperate policy on the part of the British Government may in a few years advance these valuable possessions almost incredibly in point of security, prosperity, and happiness. If unfortunately a wrong course be taken, it may not only vastly retard their progress in every respect, but it may lead to consequences fatal to their tranquillity, and even destructive of their connexion with the British Crown.

Opinions in the provinces are of course much influenced by local interests and attachments.

It adds no little to the difficulty of arriving at a safe and satisfactory conclusion, that this is clearly one of those subjects, in respect to which it may reasonably be apprehended that those who, from long residence, or intimate connexion with the Colonies in question, have the best means of knowing what measures would be most advantageous and acceptable, may suffer their judgments to be warped by considerations of personal interest or convenience, or by local attachments.

There are, indeed, many people not otherwise unworthy, of whom it may be said, with truth, that they appear incapable

of adopting any course in public matters which may seem likely to bring injurious consequences upon themselves.

There are others, and these I trust are a more numerous class, who would unwillingly think themselves capable of deliberately sacrificing the public good to their private advantage; but who, nevertheless, do insensibly allow a strong sense of probable injury or inconvenience to themselves, or to their friends or neighbours, to bear with more than its due weight upon the decision of questions which require to be disposed of upon higher considerations and more enlarged views.

Few persons, perhaps, can safely flatter themselves that they are entirely free from this weakness. The inhabitants of Falmouth, I imagine, will with difficulty be able to bring themselves to see any great public advantage in transferring the packet station from their safe and accessible harbour to Liverpool, Bristol, or Portsmouth. The proprietor of a park through which the track of a railway has been ruthlessly laid, is apt to have very serious doubts of the wisdom of making everything bend to the prevailing passion for travelling at the rate of forty miles an hour; while, on the other hand, the shareholders in the railway company naturally look upon any man as very unreasonable, or very weak, who talks about being annoyed by a great public improvement, from which the company expects to derive, some day or other, a profit of ten pounds in the hundred.

Expectations respecting the seat of government.

I observe that the inhabitants of Montreal, by whom the project of an union has been for many years most strenuously and perseveringly urged upon the Government, are under the impression, if the confident predictions of their public press can be taken as an index of their sentiments, that, in the event of an union, neither Quebec nor Toronto will be the seat of the Canadian government; nor any other place than Montreal.

The inhabitants of three or four other towns seem as naturally to have given way to the conviction, that the spot on

which they dwell cannot fail to recommend itself to the wisdom of Parliament, as better suited to the purpose than any other.

Of course all these towns, with the exception of one, would be destined to find that, so far as these hopes were concerned, they had been labouring for the union in vain. Which one of the number might prove to be the fortunate exception is prudently, though perhaps not quite fairly, left in uncertainty by the bill; and while this point is in suspense, the chance of coming in for the distinction is well calculated to swell the number of advocates for change.

Consequences of removing it.

If the hope of any of them be well-grounded, then Toronto must, of course, cease to be the seat of government, though it may readily be supposed that such a change must be productive of serious injury to many of its inhabitants, and even of ruin to some. And the blow would be felt the more heavily, from the fact, that they have had good reason for believing themselves to be secure from such a reverse. Toronto has now been the seat of government in Upper Canada for nearly forty-five years. More than twenty years ago, the government of this country had for a time some intention of making Kingston the capital, led, I believe, by the suggestions of some military men, who had formed the opinion, that a town in a level country is incapable of being defended, and that it was of more consequence that the seat of the civil government in a colony should be a strong military position, than that it should be so situated as to conduce most in time of peace to the general convenience of the province, in all matters relating to their civil concerns.

After due consideration, however, the idea of making the change was abandoned, since which period expensive public buildings have been erected, and the population has increased from less than 1000 to 12,500. Of this population there are many, in all ranks of life, who have acquired property and built houses, in the full confidence that all uncertainty about the permanence of the seat of government was at an end.

Among the respectable emigrants from Europe who have settled in the city and its vicinity since the intention of changing the seat of government was abandoned, there are many who, feeling this confidence, have not hesitated to invest whatever capital they brought with them, or have since acquired by their industry, in the purchase and improvement of property, which, in the event of such a measure being adopted, would be greatly depreciated in value, and would probably be for some time scarcely saleable at any price.

There are other evils and inconveniences which need not be dwelt upon in detail, but which are inseparable from a change of this kind, made after a country has attained to the state of advancement in which Upper Canada now is; and which, it is to be presumed, have, in all countries and times, operated strongly in deterring governments from such measures: for it is remarkable in how few instances the seat of government of a country has been removed, though there are many where the reasons which led originally to the selection have long ceased to apply.

Nevertheless, it is quite clear that there may be public exigencies requiring sacrifices to which all must be made to submit; and if there be really strong reasons in favour of uniting the provinces,—if it be certain that their union will produce for Canada generally advantages far overbalancing any evils which it is likely to occasion, then it cannot be denied that all partial inconveniences and losses must be encountered, for the sake of the public good. If it should follow as a consequence that the seat of government must be transferred from Toronto to some other position, that must of course be submitted to. The injury, whatever it might be, would be a present evil, affecting only a part of the province, and it ought not to stand in the way of great and permanent good.

Those upon whom it might press most hardly must rely upon receiving the just consideration of the government; and the only weight which it can be right to give to considerations of this kind is, that they should manifestly incline the mother

country to forbear from making a change of this description, unless upon the clearest conviction of its propriety—in other words, they should serve as a powerful check against the engaging in any doubtful experiment, and especially upon the importunity of interested parties. If the scale hangs at all in suspense, it should be recollected that it is one thing to disappoint expectations of probable profit which it may never have been reasonable to form, and another thing to tear from hundreds, or from thousands, advantages honestly acquired, upon which the subsistence of themselves and their families depends, and which they had no reason to suppose they held by any precarious tenure.

Leaving these considerations to receive whatever degree of attention they may seem entitled to, I will proceed to discuss the question upon broader grounds.

Question of Union considered on general grounds.

There are many persons, I have no doubt, both in the Upper Province and in the Lower, who desire an union for general and public reasons, and apart from all motives of private or local interest or convenience. The motives which prevail with them are different, according to circumstances; for those who reside in Lower Canada do not feel the force of those real or supposed inconveniences from which the inhabitants of Upper Canada seek to be relieved. It is unnecessary, however, to discriminate between these advocates of the measure. I believe the following to be the reasons, for some one or more of which the union is desired by all who have made up their minds to support it.

Benefits expected from it.

It is expected from the union :—

First.—That by rendering powerless that feeling of hostility to British rule, and to British laws and institutions, which is reported to actuate the great mass of the French Canadians, it will deliver the Government from that vexatious opposition in the Assembly which has for many years obstructed all its efforts for the public good, and has even endangered the security of the colony.

Secondly.—That it will lead to the voluntary substitution of English laws for those which now prevail, thereby affording a scope to British enterprise, and security for the investment of British capital, and rendering the colony British in fact, as well as in name.

Thirdly.—That it will place the power of legislation in the hands of men who will give more liberal encouragement to trade and public enterprises; and,

Fourthly.—That it will obviate whatever difficulties the division of the colony has occasioned in regard to the regulation of trade, the imposition of duties, the distribution of revenue, and the improvement of such navigable waters as are common to both provinces.

There may be other advantages anticipated which I have not heard stated, and which do not now occur to me; but I believe these are the chief, if not the whole. They are, indeed, objects of that importance that the bare statement of them might almost seem to decide the question, if it were not that between the promise and the enjoyment of benefits, there are so many chances of disappointment, that we must take care not to lose the substance by grasping at the shadow.

That it will put an end to the evils which have arisen from the ascendancy of the French Canadians in the Legislature.

With respect to the first expected advantage, it is quite clear that all who have asked for the Union, whether residing in Upper Canada, in Lower Canada, or in England, assume, as a matter of course, that it *can* only be thought of by the Government in connexion with such a measure as would certainly place the French Canadians in a decided minority in the new Assembly. Some have asked the Government to secure this object by disfranchising, after a certain period, all who do not hold their lands in free and common soccage, or, in other words, to deprive the whole, or nearly the whole French Canadian population, about 450,000 in number, of their right to vote. Some have recommended that the Governor shall have a

discretionary power to suspend the issuing of writs of election into districts in which "*he may be of opinion that elections could not safely take place;*" and others have expressed their confidence that the Government would proceed more directly and certainly to the object by so modelling the representation in the provisions of the act itself, as to make it clear that British ascendancy is meant to be attained and secured.

What security does the Bill afford for this?

It is evident that the bill satisfies none of these expectations. The two first expedients were not likely to be adopted; and the Government has clearly rejected them, for there is not a word respecting them in the bill—and instead of fulfilling the expectations of those who hoped to see the desired security on the very face of the enactments, the scheme which has been proposed leaves everything upon that point uncertain. It commits the modelling of the representation to the discretion of arbitrators, leaving it therefore unascertained, and unknown, until after the bill shall become a law, and after the present constitution of Upper Canada shall have ceased to exist, upon what foundation the very corner-stone of the new structure is to be laid.

In Lower Canada such a scheme may possibly satisfy some, because looking upon their late constitution as only suspended for a time, and having, in case of its resumption, no security whatever against the overwhelming ascendancy of French interest, they may be content to take their chance of an arbitration, or of any other indefinite hope. But the majority of intelligent people in that province cannot, I think, be satisfied with it; because they have felt that the very shameful misconduct of the French Canadians will warrant the Government in providing by whatever means are least exceptionable against the possible recurrence of such calamities from the same source. They have, therefore, reasonably looked for something better, so far as their own province is concerned; and in regard to Upper Canada, they can hardly fail to remember that not being now subject to the danger of French ascendancy in the

slightest degree, the loyal people of that province ought not to be unnecessarily exposed to an evil, which under their present constitution could never possibly overtake them.

I know not whether any compromise may have taken place in Lower Canada since the first impression made on the public mind by the account of the plan proposed was frankly avowed by the press; but it is clear that when the impression was fresh it was strong and decided. On the 18th of July last, the Montreal Gazette, a respectable, and long-established journal, which has always most zealously laboured to promote an union of the provinces, published a sketch of the leading features of the bill, as they had been stated in a letter from England. The sketch which had been thus sent was not in every detail consistent with the bill which had been brought in, but it was substantially correct in all its principal features; and speaking of it, the editor says:—"We cannot help remarking, that the scheme, if scheme it be, is far too preposterous to be seriously entertained by any one in the least degree acquainted with the principles of the British Constitution, or the state of society in these provinces.

"In truth the plan in question is not worth discussing; for we cannot believe that any sane minister of the crown would venture to propose it to Parliament in direct opposition to the friends of the union, both here and at home, and in the face of the abundant information which has been furnished Government on the important measure.

"Better have no union at all than such an union as the plan in question would give to us; and much and long as we have advocated the measure in the abstract, it is our resolution, should the present plan prove to be well-founded, to oppose it to the utmost of our power. But we have better hopes of the present Government, and the good sense of Parliament, than to believe that so republican and revolutionary an union will ever find favour among any portion of them."

In regard to the second benefit expected, namely, the introduction, through the agency of the new legislature, of English

Expectation that the union

will lead to the introduction of the law of England.

laws, and the encouragement expected to be given to British enterprise and capital: I believe that this hope would be in a great measure frustrated, if not wholly, under any such system as this bill would establish. The Canadians would very naturally suspect that the abrogation of their laws had been the main object of the union; and independently of all other motives of action, the determination to resist such a change would inevitably combine them almost to a man, and would preserve them an undivided body in the joint Assembly.

It is quite true that, upon any just principle of calculation, the representatives of the French Canadians ought not to be, and I dare say they would not be, the majority in the Assembly. But those who may imagine that they would be left to act alone in whatever contests they might be engaged in with the Government must be strangely inattentive to what passes in other countries, and can have had but little opportunity of observing the course of political proceedings in either of the Canadas. It is most likely that those members in the joint Assembly who might not be of French origin, might feel little or no desire to take under their protection French laws, or customs, or language, merely for their own sakes; but many of them, it must be remembered, unless they differed from all other bodies of a like nature, would have their own schemes of annoyance, their own dreams of ambition, their own feelings of resentment, their own projects of reform, which might be just as dangerous to the continuance of good government, and just as subversive of the public welfare as any that might find a place in the breast of a French Canadian.

They will not fail to consider that by attaching themselves to the representatives of the 450,000 French Canadians they will render the success of their own movements certain, so far, at least, as the Assembly is concerned, unless, indeed, they should form a much more trifling opposition than any Government either in Great Britain or her colonies has usually to contend with.

And it is not very rational to suppose that they would de-

prive themselves of this alliance by uniting with the loyal and well-disposed in objects to which sound patriotism alone could prompt them. The more safe anticipation is that they would be found constantly employed in fostering in the minds of the French Canadians the most groundless suspicions against their Government and their loyal fellow-subjects; supporting them in their attacks, and encouraging them in all their opposition.

I am not warranted in assuming it to be the settled intention of the Government to introduce into Lower Canada the laws of England; for, indeed, the bill contains provisions which seem to have been inserted with a view of holding out to the French Canadians a promise of protection in this respect. But if there be any hope or intention of the kind, I am persuaded that it would be wisdom to follow the example set in England in the abolition of feudal tenures, by proceeding directly and openly to the object, I mean through the intervention of Parliament. Then the measure would be certain and final—and it might be effected promptly. If it be left to the chance of being accomplished by the new legislature, no man now living can feel any confidence that he will see such a result.

The attempts to do it, on the one side, and the fear of its being done on the other, may give rise to a bitterness of contention, and a constant jealousy ruinous to the character of the legislature. Beyond that, nothing can be predicted with the least confidence.

Expectation that the new Assembly would be more liberal and enterprising in their measures.

With respect to the *third* benefit expected, namely, that the new House of Assembly would be composed of men who would give the proper encouragement to trade and public enterprises: this is a hope which, I take it, is not very much better founded than the others.

Those who occupy themselves in throwing ungenerous obstacles in the way of their Government, for the purposes of party warfare, whatever may have been the country of their birth, are found to be but little solicitous about useful public enterprises, and the advancement of trade.

All they mean or desire to foster is public discontent, and those who mark their proceedings will soon have cause to be satisfied that there is scarcely a public interest which they will not be content to see languishing, and in ruin, rather than that the friends of the Government should be enabled, by successfully promoting it, to strengthen their claims upon the good will of the community.

But if this were otherwise; and if French Canadians were the only men (which they certainly are not) who are ready to sacrifice to party the real interests of their country, it is still prudent to consider that trade and revenue are not all that constitutes the happiness of a people, and that by endangering other objects in the hope of benefiting these, we may find that we have purchased even wealth at too high a price.

Expectation of the people of Upper Canada.

The last of the objects, which I have supposed the promoters of the union to have in view, concerns Upper Canada mainly, but not exclusively. It is thought, I dare say, that an union of the provinces will best remedy whatever inconveniences the separation (in 1791) has occasioned, in regard to the regulation of the import duties, and the trade by sea generally, as well as the distribution of the revenue between the two provinces, and the improvement of those navigable waters which are the common highways for both.

I think a reflecting person will see, in regard to these objects, as well as some others that have been spoken of, abundant reason to apprehend a great deal of angry and fruitless altercation, with the probable disappointment of reasonable hopes; but no certain assurance of anything more satisfactory. As to the division between the two provinces of the duties raised at Quebec upon goods imported by sea, it is already permanently provided for by the Imperial Statute, 3 Geo. IV., chap. 119.

Present situation of Upper Canada with respect to the distribution of revenue on

For about twenty-five years after the division of the provinces, in 1791, there was no difficulty upon this point. The duties received at Quebec were apportioned by an amicable arrangement through Commissioners, renewed from time

to time, in order to meet the varying proportions of population and consumption in the two provinces. At length, however, when the assembly of the lower province became unreasonable in their own matters, they began to be unreasonable also towards Upper Canada. For several years they interposed obstacles to the renewal of the agreement that had expired; they then refused to take any step towards an adjustment; and at last, from withholding the remedy, they brought themselves utterly to deny the right, and they persisted in keeping in the chest of Lower Canada the whole amount of duties levied at Quebec.

imports, under Statute 3 Geo. IV. c. 119.

After many fruitless efforts to obtain justice, Upper Canada being left for some years without a shilling of this revenue, was driven to appeal for redress to the Imperial government. This was in the year 1822; and then the statute referred to (3 Geo. IV. chap. 119) was passed. Any one who will take the trouble to examine its provisions, will see that they are perfectly just in principle; and during the seventeen years that have elapsed, they have proved to be equally effective in practice.

The duties are necessarily paid, in the first instance, into the chest of Lower Canada; and all that was necessary was, to take care that Upper Canada should receive her just share of them in proportion to her population, or if it could by any other rule be more exactly ascertained, in proportion to her consumption of the merchandise upon which the duties had been paid.

It will be found on examination, that the measure adopted by Parliament for adjusting the proportion and securing its payment, is such as renders Upper Canada completely independent of the control of the Assembly of Lower Canada in these respects; and it is quite evident that so long as the Queen's officers in the one province do not fail to comply with the precise injunctions of the Imperial Statute, there can be no delay, no obstruction, or interruption, to the prejudice of the other.

And at the same time that this object is thus securely provided for, it is to be observed that the Assembly of Lower Canada in the wildest period of their contentions, have never, so far as I know, since the Act was passed, made any complaint against these provisions. On the contrary, I know that both in the Assembly, and by large masses of their French Canadian constituents, it has been admitted in public documents, that the interposition of Parliament had become necessary for the protection of Upper Canada; and that they could not complain of the enactments by which that protection was afforded.

It is true, I believe, that both parties have not always been satisfied with the awards which have, from time to time, been made under the statute; but when opposing pecuniary claims which are not capable of being settled by any mathematical process, are sincerely urged, I do not know that any means have yet been discovered for arriving at a result that will be satisfactory to both. The fulfilment of one expectation will be usually the disappointment of the other. In the instance of these awards, indeed, it is rather a satisfactory circumstance, that at the conclusion of each arbitration, it has been commonly complained of by the upper province, that she did not receive as much as she was entitled to, while the lower province protested that she had received too much. The probability is that in these cases, as in most others, truth lay between the extremes of the respective claims.

Upper Canada, increasing as she is in numerical strength, and certain to have on that account a just claim to an increasing share of duties, will see in this statute, if she be wise, her best assurance for receiving in all time to come her full right. So far as this consideration goes, she should pause before she commits herself to the chance of any other experiment for securing to the people within her territory the benefit of all the revenue to be levied upon the articles which they may consume.

Before I leave this subject, I will remark, that there is one

grievance yet unredressed, connected with the division of duties, by reason of a defect in the statute, which, though of minor consequence in reference to the main arrangement, becomes, in the course of years, the occasion of a considerable loss to Upper Canada. But it is a grievance for which the remedy is as simple, as the occasion of the defect is obvious.

The Act 3 Geo. IV., ch. 119, provides for the division of all duties levied at Quebec, under the previous British Statute, 14 Geo. III., ch. 88; it provides also for the division of all duties levied under the acts of the legislature of Lower Canada, which latter form the great bulk of the revenue. But it does not make provision for apportioning such duties as might be levied under any British Statutes which should be passed after the 3 Geo. IV., ch. 119.

The bill, as it was framed and brought in, provided for the division of all duties that should be levied at the port of Quebec, and would have embraced, therefore, these latter Imperial Statutes as well as others; and it stood in that shape when printed by order of the House of Commons, on the 24th of June, 1822. But it did not pass in that shape; probably because at that time the Government intending, as they avowed, to press, in the next session, their bill for a legislative union of the provinces, were willing to leave to future regulation by the joint Legislature the division of any duties that might be raised under such Imperial Statutes as should be afterwards passed. There have been several of such subsequent statutes; and a considerable amount of duties has been levied under them—which duties the arbitrators have not thought they had authority to divide.

Upper Canada has, in consequence, been delayed in the receipt of her proportion of them to the present time. Her legislature has repeatedly prayed that a short act might be passed repairing the omission, and the Secretary of State has given reason to suppose that it would have been done; but in the press of public business it has been passed over.

There can be no good reason for apprehending longer delay

in doing what is so obviously just; for it cannot for a moment be supposed that an inconvenience so easily removed will be suffered to exist, in order that it may be referred to as an argument for an union of the provinces—and, indeed, it is far from supplying such an argument, for if the provinces were to be united, it is plain that, as respects the past at least, Parliament should repair this defect before the union, so that while Upper Canada *is sole*, she might receive, and appropriate to her own use, these revenues which ought long ago to have been placed at the disposal of her legislature, by a voluntary act of justice on the part of Lower Canada.

Inability of Upper Canada to increase her revenue by laying duties on imports.

With respect to another branch of this subject; namely, the inconvenience which Upper Canada experiences in having no control over the imposition of duties at Quebec, and being, consequently, unable to increase her revenue, as her occasions may require; and with respect also to the indisposition on the part of the Assembly of Lower Canada to co-operate in the improvement of those navigable waters which run through both provinces,—these, no doubt, are great checks to the prosperity of Upper Canada; and, in order to remove them, it would be wise to risk a good deal, but not to risk everything.

It is prudent first to ask ourselves this question—Would the object which Upper Canada desires be certainly attained by giving one legislature to the two provinces, in which legislature Lower Canada should be represented in proportion, or nearly in proportion, to her population? To satisfy ourselves what answer can be safely given to this question, it will be well to call to mind whether they have been French Canadians only who, in the Assembly of Lower Canada, have discovered an indisposition to comply with the reasonable wishes of Upper Canada in these respects—and whether, on the contrary, those members of British origin, who united with the French Canadians in their general political course, did not also unite with them upon such questions as concerned the interests of Upper Canada.

It will be prudent also to consider whether most of the

valuable improvements which have been made in Upper Canada, and the measures necessary for procuring funds for such objects, have not usually encountered a formidable opposition within the Assembly of Upper Canada itself.

And when both these considerations are weighed in addition to the assumed certainty that the representatives of the French constituency will be found hostile, it will appear wise to inquire whether some other arrangement might not be devised for attaining the objects referred to, which, while it threatened less evil, might hold out some more satisfactory assurance of good.

That it is very possible to suggest such a measure I am strongly persuaded; and if Parliament does not make the attempt, it will, I believe, be principally owing to the unfortunate circumstance, that the inhabitants of a portion of Lower Canada refusing to regard, even as probable, dangers which their experience and observation might convince them are certain, have urged the measure of an union as the only cure for all difficulties, and have urged it with a confidence and perseverance which seldom fails to attain its end.

That difficulty might be remedied by a measure of less dangerous tendency than the Union.

But I am anxious to confine this paper, if possible, within a reasonable compass; and I will therefore proceed now to state what are the evils which, in my opinion, are to be apprehended from uniting the provinces as proposed in this bill. I will state these as plainly as I can, and as shortly as the nature of the subject will permit.

Objections to the proposed Union.

I greatly apprehend that whatever advantages might be reasonably expected from a legislative union of the four North American colonies, if that were found practicable, and considering the character of the population of Nova Scotia and New Brunswick, the effect of uniting the two provinces of Canada only, will be to create a representative assembly such as the Government will be unable to withstand, except by measures which it is painful to anticipate—that it may, at the very outset, and will certainly, at no distant period, give existence to a representative body in which the majority will not merely

It would create a Legislative Assembly not likely to be more reasonable than the other, but certain to be much more formidable.

be opposed in the common spirit of party to any colonial governor who shall not be unfaithful to his trust, but a majority which would be held together by a common desire to separate the colony from the Crown—a party, consequently, whom it will be impossible to conciliate by any concession within the bounds of right.

I fear that, nevertheless, the anxiety to moderate such opposition; the desire to be relieved from harassing complaints; the necessity for obtaining, by some means, a reasonable degree of co-operation on the part of the legislature; and the delusive hope of succeeding, where other ministers and other governors have failed, but where success by honourable means may be impossible; and, even more than all, the desire of avoiding, for reasons of policy and humanity, the necessity of a recourse to arms, may induce future administrations, and future governors, to surrender what may be essential to the safety and welfare of the colony. The opposition of the Assembly, while it represented Lower Canada alone, appeared to the Government in England to be so formidable, that the influence of the motives I have just enumerated was fast weakening the Royal authority, and depriving the constitution of that power of protection which is necessary for the public good. So much so, indeed, that I believe there are few people who do not feel that, however lamentable have been the events of the last two years, they have, at least, been so far beneficial that they have forced upon the mother country convictions which nothing short of such calamitous proof seemed capable of impressing.

How much greater then will be the danger, when every threat from the Assembly must be treated as proceeding from the representatives of the whole of Canada; and when every perplexing obstacle thrown in the way of the executive Government will create in the two provinces the same embarrassment and confusion which under the former system could only extend to one!

The mother country, the other colonies of the Crown, and the loyal inhabitants of the provinces in question, would thence-

forward lose the advantage which has recently been of such vast importance—I mean, the advantage of having one colony sound in her allegiance, and ardent in her loyalty, serving as an example and as a check to the other.

The British population of Lower Canada, and particularly of Montreal, are willing, it seems, to incur the risk of this disadvantage; and they ask eagerly to be united to Upper Canada, in the hope, (for their loyalty is unquestionable,) that the Assembly returned to represent the two provinces will be sound in their political views. But is it possible that they can feel confident in this hope?

Securities desired by Upper Canada.

That they might have some ground for confidence, they have asked for certain securities to be afforded to them in the details of the measure. And under a conviction of the same necessity the Assembly of Upper Canada, in giving their qualified assent to be united with the other Province, have been very explicit in announcing it as one of the conditions on which alone they could prevail on themselves to give that assent, that Lower Canada shall return but fifty members to the Assembly, while Upper Canada shall retain her present number, which is not less than sixty-two, and, I believe, may be rather more. They have also required *eight* other conditions, all evidently intended as security against the dangerous preponderance of Lower Canada in the Legislature. But the bill, as it stands, affords not one of these securities. The Government has rejected them all; and for my own part, I consider that rejection fortunate, because Upper Canada is now fairly warned that if she is to have the union, she is to have it without them, and she is therefore enabled to estimate the more clearly beforehand in what position she would be placed by it.

Not proposed to be conceded.

To have relied upon such securities would have been nothing less than an unfortunate delusion: if every one of those conditions were to be inserted in the act, they would not form an effectual security, and it is at least equally certain that they would not have been permanently retained in force. However reasonable and necessary they might be, they would be un-

Would have been of little value.

equal in appearance, and in effect; they would therefore be the subjects of perpetual complaint and clamour, and the desire to be rid of them would be for ever made the pretence of popular movements. The points would be gradually yielded. If the French Canadians should be violent and clamorous, they would be conceded in the hope of appeasing them; if they should be for a time plausible and submissive, they would be conceded from another motive; and sooner or later the people of Upper Canada would, I apprehend, be left to take their chance of the union without their securities.

Before the Assembly of Upper Canada contented themselves with stipulating for conditions, it would have seemed a natural question for them to ask themselves how it has happened that the Statute of 31 Geo. III., the constitutional act of the Canadas, has not been able to maintain its ground. It has been again and again acknowledged by the Assembly in both provinces in public addresses to the Government, to be, what in truth it is, as liberal, as just, as unexceptionable a constitution as any colony ever enjoyed. It has nevertheless been gradually infringed, and at length defied, and having been contemptuously abused, it is now proposed to be abandoned. An inhabitant of Canada should in common prudence ask himself this further question. Why is it proposed in this bill virtually to destroy the constitution of the Legislative Council, and why has that branch of the Legislature failed for years to receive that support which their conduct, as well as the principles they were upholding, entitled them to expect? Why has it been assumed in public documents, and in parliamentary discussion, that there must be something fatally wrong in the structure of that body, or something wilfully injurious in their proceedings? No abuse was ever traced to them; no oppression charged; no corruption pointed out; no single act of theirs has been ever brought openly and distinctly into discussion for the purpose of showing that they have even erred in judgment. Their demerit has been that they have not always gone on cordially with the assembly, when it is now plain in England, as it

always has been in Canada, that they could no otherwise have done this than by combining with them to insult and embarrass the Government, and to undermine the constitution which it was their bounden duty to maintain. Surely it was no error in judgment that they have always constantly and firmly, but temperately, endeavoured to withstand by constitutional means those destructive schemes which the mother country has at last found it necessary to repress by her armies—and yet it will be found that in several public discussions they have been either surrendered silently and without vindication to whatever censures were cast upon them, or the censure has received countenance, where the Council could not but feel that they had a right to look for support. And now, at the termination of the contest, it is proposed to change their constitution, apparently for the purpose of moulding it more in accordance with that branch of the Legislature from which all the difficulties have sprung.

But to say nothing more of the uncertainty of maintaining securities; what security would the proposed measure offer against those evils which it is evident are apprehended in Upper Canada, and not less in Lower Canada by the British population, for they have expressly and in forcible language avowed their apprehension of them? There is no security in respect to the composition of the Assembly—none but the chance of what may result from the award of arbitrators;—arbitrators to whom the act conveys, in this respect, no instructions, and who could with propriety receive none from any other quarter.

If it be desired and expected that the result of such an award shall be to limit the number of members from the French constituency to one-third, or one-fourth, or one-fifth of the whole, or to any number less than they would be entitled to by their numerical strength, the only way to ensure such a composition of the Assembly would be by positive provisions in the act itself. What the arbitration might result in no one could feel assured, unless it were admitted that the arbitrators might proceed upon plain principles of computation, like those

appointed for the division of the revenue. It is true that if the award should not be approved of, it may be rejected, but that brings into action the executive Government, and their interposition could, after all, establish nothing. It could go no farther than a bare veto.

Proportion of French Canadians in the Assembly.

But the most discouraging consideration is, that nothing which Parliament could establish in this respect, nothing which the loyal people of Canada could rationally hope to see maintained would afford any satisfactory prospect of future peace and good government. If the French Canadians are not to be disfranchised, which they certainly ought not to be, and which it is not intended they shall be, their representatives must bear some very considerable proportion in the Assembly. It is reported officially to Her Majesty that the French population in the two provinces is estimated at 450,000, and the English at 550,000.

If, therefore, there were no reason for making any distinction to the prejudice of the former they would have in the Assembly, taking population as the basis, not less than 44 members out of the 98, and possibly more, because many of the English inhabitants of Lower Canada are living in places where they are in a decided minority, and for which French members would be undoubtedly returned, which perhaps is not true, *vice versâ*, to the same extent of the French population.

Let it be supposed, however, that upon any principle the number of French representatives should be brought much lower; that it should be reduced to 40, or even to 30, and what might then be reasonably expected as the result?

Let any one, acquainted with the proceedings of popular assemblies and the movements of political parties reflect upon this for a moment.

Let him call to mind that in Lower Canada the most exceptionable resolutions and attempts of the Assembly were by no means wholly unsupported by those of British origin; and that in an Assembly of 80 members they were seldom encountered by an opposition ranging higher than from three to

ten. Let him next consider how short a time has elapsed since the majority in the Assembly of Upper Canada was led by persons, some of whom have shown too clearly their desire to arrive at the same results. And, lastly, let him look to the practical effect in the mother country of the great change which has been made in the representation; and let him suppose that in the House of Commons, containing above 650 members, there were 200, of whom it might be considered certain that nothing could be expected from them but a reckless, undiscriminating, factious opposition, prompted by the wish to destroy the power of the crown, and to gratify such feelings as Her Majesty has been assured by the royal commissioner now reign, and must be expected to reign for ever in the breasts of the French Canadians. In other words, (though this case would be scarcely so strong,) let it be supposed that the deluded Chartists continuing for ever, or even but for a half a century under their delusion, were to be represented in the House of Commons by 200 of their devoted followers. It would be very clear, I imagine, that with all the help of the vast patronage of Government in this great empire—with all the influence of ancient and venerable institutions, and the traditionary respect for rank and family—with all the substantial power of wealth, and the control of numerous landlords over a grateful tenantry: that with all these advantages no good result could be insured, and that neither the present nor any other ministry could long conduct with effect the business of the empire. It is even more clear that without such sources of influence as I have spoken of no administration in this country, appointed by the Sovereign, could stand for a moment. But Upper Canada has none of these counteracting checks. There it may almost be said that every farmer is an independent freeholder, and every male adult a voter. With nearly universal suffrage, in a colony situated as that is, is it reasonable to count upon such a majority as will render innocuous the hostile feelings which are represented as pervading the whole French population?

There is in all free countries a party in opposition to the Government. If other causes were wanting, the desire of place alone would produce it, wherever public employments are by the constitution accessible to all; and where such a party has been once formed, temporary causes of excitement will bring occasional accessions to its ranks, and when habitually combined in the pursuit of common objects, who can hope to set bounds to its desires, or to limit its attempts?

Frequently, and for years together, the opposition in Upper Canada has prevailed as decidedly over the Government, as it has done in Lower Canada, though not by a majority quite so disproportionate; and if the two provinces shall be united upon any principle of representation which Parliament could think of proposing, it would not be long, I fear, before the British Government would find that their difficulties had, at least, not been diminished by the measure. And a few years experience would probably serve to convince the people of Upper Canada that they had not done wisely in balancing uncertain hopes of revenue and trade against the certain and peaceful enjoyment of blessings which they well know how to appreciate, and which, under their present system, they will become every day more capable of preserving.

The loyal British population in Lower Canada might also be compelled to acknowledge, on their part, when the mischief had been done, that it was to no purpose they had shut their eyes against dangers which there was no reasonable hope of escaping; for they would probably see themselves as decidedly as ever under the dominion of a majority, from whose principles and proceedings they could have nothing to hope, but everything to fear.

And they would not then have that encouragement and support, which they derived on a late occasion from the ability of Upper Canada, as a separate province, to cast off the chains that had bound her, and to take the proud part of a loyal colony nobly rushing forward to maintain the integrity of the empire.

Coming to a more particular statement of objections, there is one mischievous consequence which I believe would be certain to follow the union of the provinces, and which it would be difficult to discuss fully without the danger of being misapprehended, or misconstrued. And yet it is the very last consideration that should be overlooked.

The union, so far as Upper Canada is concerned, would soon change the religious character of its Legislature.

The religious distinction between Catholic and Protestant has never hitherto occasioned animosity or contention in the Legislature of either province of Canada.

In the lower province the Roman Catholics are probably now in the proportion of five to one more numerous than the Protestants, and in times past the majority has been greater. In the upper province, the Protestants are probably five to one more numerous than the Catholics, and the natural consequence has been that without any intention to exclude, and without any unfriendly feeling on either side, the number of Protestant members in the Assembly of Lower Canada and of Catholics in the Assembly of Upper Canada has always been in considerable in proportion to the whole. From this decided inequality of parties prevailing from the first, it has followed as naturally that there has been no feeling of rivalry, and no contention for a pre-eminence, which circumstances had conclusively settled. On the contrary, in Lower Canada the Roman Catholic Irish have supported Protestant candidates, and in Upper Canada the Protestants of all denominations have supported Roman Catholic candidates, as freely and heartily, when they respected their private character, and approved of their sentiments and talents, as if they had been members of their own communion. Testimony to the existence of this state of things has been borne in all quarters.

But if the inhabitants of both provinces are to be represented in one Assembly, I consider it to be altogether doubtful whether that Assembly, when it shall meet for the first time, would contain within its walls a greater number of Roman Catholics, or of Protestants.

If the ascendancy of the one over the other should be found

to be fluctuating and uncertain, and to depend mainly upon the exertions that may be used at elections, then I venture to foretell, that from that cause alone will soon inevitably spring a contention more fatal to the happiness of both classes, and probably to the security of the country, than would be likely to arise from all other causes whatever.

If such a rivalry should spring up, the only relief, I think, that could be looked forward to, would be from the ultimate ascendancy of the Roman Catholic population, which, I believe, would under such circumstances be more likely to take place in the course of time than the ascendancy of the Protestants. It may be very true that in this age positive oppression need not be apprehended from such a cause; but the absence of positive oppression is not the only end of good government. And at all events, the experiment is one, which in my humble judgment ought not to be made.

Canada, when it was conquered, was a Roman Catholic country, but its inhabitants, with a very trifling exception, occupied only the portion of it which is now Lower Canada. That portion has, in the natural progress of events continued to be essentially Roman Catholic; and if it should remain so for ever, it is a consequence that has naturally arisen from the early settlement of the country; and though, when I look at the state of education among the peasantry in that colony I cannot conscientiously say that it has been no disadvantage, yet I gladly admit that it appears to have had little or no share in producing the political evils that have been suffered.

But it is just to remember that Upper Canada was made a separate colony, in order that those who might choose to settle in it might be free from anything which might appear unfavourable to their welfare in the laws or condition of the other province.

It is, and always has been, as decidedly Protestant, as the other province is Roman Catholic. While it continues to have a separate legislature, and to form a distinct territory, it

is likely to remain so; and I can never feel that Parliament has a right to change in effect its religious character by uniting it to Lower Canada.

The Roman Catholic population of Upper Canada consists of Irish, Scotch, and French Canadians. They have been fully as loyal as any other portion of the Queen's subjects: they have indeed been eminently faithful to their allegiance throughout, and no less can be said with justice of the Roman Catholics of British origin residing in Lower Canada.

For the sake of themselves, as well as of their fellow-subjects and their country, I hope they will not be placed in circumstances less favourable to the preservation of that character which they have hitherto so honourably maintained.

The noblest virtues, both public and private, are too apt to perish in the contest of parties.

Would it have been a wise, a safe, or a justifiable remedy, to have proposed for the troubled state of Ireland, in 1798, that it should be united with Scotland alone, and one legislature given to the two kingdoms, with the right of almost universal suffrage?

I think the people of Scotland would have had the sagacity to perceive that they were about to be made rather an unfair use of, in the doubtful hope that they might prove sufficient by their weight to keep down evils which, if they rose above them, might be for ever fatal to their dearest interests.

The whole of Canada is much too large a territory to be governed as one province.

It is another objection to this proposed measure, and I think a very striking one, that the two provinces united would form a territory much too large to be conveniently and safely ruled by one executive government.

This opinion has been expressed by both branches of the Legislature in Upper Canada; and a deliberate consideration of the matter can scarcely fail to convince any reasonable person that the opinion is correct.

I do not speak of Canada with reference to what are really its geographical limits, for in that sense it is a country of prodigious extent; but I allude to that part of it only which is

actually organised, surveyed, and divided into districts and townships, and over which large agricultural settlements are spread, which are daily and rapidly increasing.

Taken in their present state, these settlements compose a country larger than any European kingdom. There are to be sure some two or three large empires on the globe of much greater extent, but it is not attempted to rule these by the machinery of a single government, though they are each subordinate to one sovereign power. The vast Russian empire, for instance, is divided into a great number of provinces; and there are few of the large states of Europe in which the powers of government extending to the regulation of the ordinary interests of society are not exercised by departments more accessible, as respects distance, to all the inhabitants of the territory, than is the case in either of the provinces of Canada, even as they are now constituted.

The kingdom of Belgium, or Holland, or Denmark, is scarcely larger than some of the twelve districts into which Upper Canada was until lately divided, and the two provinces united would compose a territory so large, that I know not where we could look for an example of a civilised community spread over such a surface, and attempted to be held together by one executive government.

We should find none, I think, in Europe, at least none in countries where the climate and the soil admit of a dense and settled population; and though most arrangements are on a large scale in North America, yet, if we look at the map, we shall find that not less than six or seven states of the republican confederacy lie opposite to the frontier of Canada, each having within itself a separate government.

In the case of the union with Ireland, the laws of that country did not lose the support, nor did its inhabitants lose the convenience, of an executive government easily accessible. And even in the case of Scotland, the same thing may be said,—though its individuality was not preserved to the same extent. Scotland is still Scotland; it still exists as a separate country, in a degree not unimportant to the convenience of its inhabit-

ants; but the effect of this bill would be to confound all distinction of territory, and to make the whole of Canada *one* province under *one* government.

No person who, like myself, has been for nearly thirty years traversing annually a large portion of Upper Canada, can possibly persuade himself that the great ends of civil government, safety and convenience, can be reasonably provided for under such an arrangement. If it be attempted, the change cannot last. The inconveniences to which it would give rise could scarcely be over-stated: on the contrary, it would be found, on experience of such a system, that it would lead to difficulties greater than had been foreseen.

If an Act of Parliament were to be passed making all England one county, it would scarcely be a more inconvenient change, I think, than the subjecting the whole of Canada to be governed by one executive.

The inconvenience which would follow.

To see more clearly the effect, we must consider that, as in one province there can be but one government, so that government must be stationary, and must have its seat somewhere. The bill affords no hint as to where that seat would be; but in this respect, as well as in regard to the very material point of settling the proportion of representatives, it leaves every one at liberty to hope, according to his fancy; and it is much more easy to conjecture why this course has been taken than to imagine how these matters would be decided in the end; for I am inclined to think that parliament could have made no arrangement of them in the bill which would not have rendered the inhabitants of the one province or the other, with very few exceptions, opponents of the measure.

But sooner or later the decision must be come to, and it would seem both prudent and just that, in a case of this description, definite and clear views should be arrived at before the existing state of things is unsettled, and that those whose interests are most involved should have some knowledge beforehand of what is intended.

On the 27th March last the Assembly of Upper Canada

passed several resolutions upon the subject of the union which was understood to be contemplated by the government. These have been transmitted to her Majesty's Secretary of State, and have been laid before Parliament. In them the Assembly declare that they are distinctly opposed to the measure, unless certain conditions, which they specify, shall be embodied in the Act that may be passed. These conditions are numerous; and the first of them all, being that to which the Assembly it appears attached at least as much consequence as to any, is, "That, in the event of the union of the provinces of Upper and Lower Canada, the seat of government should be within the present boundary of Upper Canada."

The bill contains no such provision, nor could it be reasonably expected that it would. It ought not, perhaps, to be wholly silent on the subject; but, if Parliament shall bring themselves to deliberate upon that point, they will hardly, I imagine, think it wise to withdraw the presence of the executive government entirely from that portion of Canada which contains 450,000 French Canadians, whose violence and treasonable plots have occasioned so much mischief, and whose reported hostility to the Crown is the main cause of disturbing the present constitution. This population will require, it is reasonable to suppose, to be rather more closely superintended than could be conveniently done by an executive government situated in Upper Canada, and it will be a misfortune, I think, if a different opinion shall be formed in this country. Quebec is, both by its position and its strength, the grand citadel of British power on the continent of North America; and it will be an unwise measure which shall remove from it the representative of the sovereign.

Not safe to withdraw the executive government from Lower Canada.

On the other hand, the expectations which I have been surprised to find are really entertained in Montreal, of that city being made the seat of government in the event of an union, are no less open to serious objections of another kind, and such as I think are sufficient of themselves to show that an union of the provinces is a project that ought not to be entertained.

The inhabitants of Montreal, and those connected with that district, either by commercial dealings, or otherwise, have been, throughout, the principal promoters of the union. The idea in 1822, I believe, originated with them, and was mainly inculcated and supported by them. From that time to the present they have industriously laboured to revive the project; and I have never thought, and do not now think, that the union, if deprived of their persevering advocacy, and left to its own merits, was likely to have been adopted by any administration.

It is, I think, a decisive argument against it, that, if the whole of Canada were made to form one territory, the seat of government could be placed at no point which would not be too distant from one or both of the extremities. Taking Kingston to be the most central point, it would be at least five hundred miles from the eastern portion of Lower Canada, and nearly four hundred and fifty miles from the western part of Upper Canada. When a comparison is made between the convenience of such an arrangement and the state of things that now exists in each province, and when it is further considered that for about five months out of twelve the only communication is by land, over roads which it may readily be supposed are not of the best description,—some idea may be formed of the inconveniences which must attend such a change.

The inconvenience of withdrawing it wholly from Upper Canada would be intolerable.

Again, if the provinces were to be united, and, from a conviction of the imprudence of removing the seat of government wholly from Lower Canada, it were determined to transfer it to Montreal, the inconvenience in the case of Upper Canada would be very much increased. The distance from thence to the oldest and most populous part of the western district is from six hundred and twenty to six hundred and fifty miles; and the inhabitants of that part of Upper Canada living in sight of a populous foreign country would be nearly as distant from the seat of their own government as Edinburgh is from Berlin, or Paris from Rome.

If such an arrangement is not without precedent under any well-constituted government, it is very nearly so. It is not thus that Great Britain has provided for the maintenance of her authority in any other portions of her vast empire. Nova Scotia, New Brunswick, and Prince Edward Island might, as regards both extent and position, be placed under one government, with infinitely more convenience than the two provinces of Canada, of which the cultivated districts extend, exclusive of Gaspé, from the 67th to the 83rd degrees of west longitude. In New South Wales, Van Diemen's Land, the West Indies, the necessity has been felt and submitted to of bringing the government within a reasonable distance of the people to be governed. And if there be a country under the crown where this consideration ought not to be lost sight of, it is Upper Canada.

Not prudent to take the Executive Government from Upper Canada

To deprive that whole territory of the presence of a governor and government would be manifestly improper, both as regards the security of the colony, and the welfare of its inhabitants. The southern and western frontiers of Upper Canada, including the large tract bordering on Lake Huron, and now becoming rapidly settled, is not less in extent than eight or nine hundred miles. Along this whole line it lies opposite to a foreign country, from whence it is easily approached by water, and in several portions of it this foreign country, more populous than our own, is separated from it only by a narrow strait, which, being frozen in winter, affords a most convenient highway from the one to the other.

It need hardly be said that either in time of war between the two countries, or in the event of irregular hostilities, which, unfortunately, can no longer be spoken of as improbable, it is important to the security of the colony that the government should be within such a distance as to admit of a vigilant superintendence. If it were to be fixed at Montreal, it would be placed fifty miles beyond the whole of the frontier which has been thus described, instead of being, as it now is, at a point very nearly central, and conveniently accessible from all parts.

Those who were in Upper Canada in 1812, and in 1837, can judge what would have been the probable effect, if it had been necessary to resort to Montreal for the protection and assistance of the government. Then, again, as regards the internal peace of the country, it requires to be considered, whether a government seated at Montreal would be in a condition to meet such exigencies as are more or less likely to occur in all countries. Riots at elections, seditious tumults, and popular commotions from various causes, now and then occur, under every form of government which is not absolutely despotic, and sometimes also there; and they usually become formidable if not promptly suppressed. There are seasons when it would probably require a longer time to communicate from Sandwich with Montreal, and to receive an answer, than it would to travel from Toronto to England.

In a new colony more especially, which is in a progress of settlement by people from different countries and of various classes, and where the elements of society cannot be expected to be at once so happily mingled as in older communities, it is desirable, on every account, that the protection, the influence, the intelligence, and the example of the government should be brought near. Toronto, though it is situated 380 miles above Montreal, is, for these purposes, too distant from some of the western portions of Upper Canada, and it has, indeed, not unfrequently occurred to me, that if it were not for the difficulty of distributing the revenue upon imports, and for the increased expense which such an arrangement would occasion, it would, on several accounts, be politic, instead of uniting the two provinces, to make one province more in this vast territory, by erecting that part of Canada which lies westward of the head of Lake Ontario into a province, of which London should be the capital, making another province below that which should extend eastward, so as to include Montreal, of which Kingston should be the capital, and leaving the remainder of Lower Canada to compose the third province. And I have no doubt that by such an arrangement the finest portion of

Provinces already larger than is desirable.

Canada, which is that lying above Lake Ontario, would be rendered much more secure against foreign aggressions, and that the convenience and welfare of its inhabitants would be in many respects greatly promoted.

To remove the seat of government wholly from Upper Canada would not only be contrary to the declared sense of the legislature of that colony, but it would be laying the foundation of certain discontent, and that to a degree that could hardly be exaggerated.

Independently of the necessity which the people are under of resorting frequently to those public departments of the government which are connected with the administration of justice, the collection of the revenue, the surveying and granting of lands, and the dispensing the patronage of the crown, the proceedings of the Legislature affect numerous objects of public and private interest, which call for the personal attendance of people of all ranks to solicit measures, or to oppose them, as well as to furnish information.

Those who have seen little of Upper Canada, and have perhaps thought little about it,—who have not travelled through its extensive districts, and know nothing, from personal observation, of the wants, the dangers, or the desires of its people,—such persons may imagine that they can provide adequately for its welfare through the agency of a government wholly removed beyond its limits. But those cannot think so who possess the means of information, which alone can enable them to judge with confidence.

Without looking to any other objection than this single one of the great extent of territory which it is proposed to place under one government, it is easy to foresee that the union would be found to disappoint the views of both classes of its advocates in the colonies. As to those in Upper Canada, who have persuaded themselves to ask for it, though only upon certain conditions, they will find that their assent will naturally be taken as something that may be advanced in support of the principle of the measure, while their conditions will be treated as matters

of detail in which they can have no right to dictate, and which Parliament must be allowed to deal with as they may think best. They would find also, in the end, that the condition respecting the seat of government, which they appear to have thought so important as to place it in the foreground, is precisely that point upon which they could least safely reckon upon a compliance with their wishes.

The expectations which, since the government has espoused the prayer of an union, begin to be openly acknowledged by the inhabitants of Montreal, though they may appear unreasonable, are nevertheless not unlikely to be fulfilled. What Parliament may decline to settle in their favour, they may trust to the progress of events for accomplishing. They may venture to anticipate that in the United Legislature all the representatives from that territory which is now Lower Canada will vote for retaining the seat of government amongst themselves; and if these should be joined by those representatives from the eastern parts of Upper Canada to whom Montreal would be more convenient than Kingston, or any other place in that province which might be thought eligible, they may well hope to see their object accomplished.

But, if there should be any among the advocates of an union whose zeal has been excited by the prospect of such a result, they may I think assure themselves that to them also the end will not be satisfactory. For the striking evils which such an arrangement would produce could not, and would not, be encountered long.

The government of this country would find it necessary to relieve the inhabitants of Upper Canada from them by some change. What the change might be it is not so easy to determine; but I can imagine none that would be so expedient as the leaving things in this respect as they are.

Two codes of laws in one province.

The objections which I have already stated are, in my view of them, so decisive, that it seems to little purpose to notice, as another objection, the unusual state of things of having in the

same colony, and under the same identical government, two distinct systems of law prevailing, not merely different tenures of real property, but totally different codes of laws, regulating all matters of contract between man and man, and in fact every private right.

If it be expected, as a consequence of the union, that this difference will gradually disappear, then I repeat that, in my opinion, the expectation is a most unsafe one. The desire on the one hand to effect the change, and the determination on the other to resist it, would produce a long and jealous contest, estranging the different classes of the population more and more from each other, and keeping alive feelings of animosity which might otherwise subside. If such a change is thought necessary to the prosperity of the country, and if those now living desire to see it accomplished, let it be done at once, openly and decidedly, by the supreme legislative power of the state, and not left to the chance of one of two nearly balanced parties, in this remote colony, obtaining a triumph over the other.

Advantages of retaining the provinces separate.

I have dwelt so long on this main question of the expediency of an union, that I can treat but very imperfectly those other changes which the bill, if passed in its present shape, would effect. But before proceeding to these I will state, in conclusion, upon this part of the subject, that, by retaining the provinces separate, as they now are, Great Britain has every assurance that she will have one colony (Upper Canada) prospering under good laws, inhabited by a British population, enjoying British institutions, and animated by sound feelings of attachment to the parent state. Thus situated, that colony will form, as she has already done, a strong barrier to the success of projects hostile to the British crown. If the two provinces be united I fear that, in the place of these advantages, we shall see jealousy, rivalry, and national antipathy working their mischief through a wider range. In times of political excitement we should have opposition to the govern-

ment producing the same troubles and embarrassments to both provinces, and, at length, concessions which would prove ruinous to both.

But if they remain separate what is to be done for Lower Canada?

But, it may naturally be asked, is nothing then to be done for overcoming the existing difficulties in Lower Canada? Must either confusion or arbitrary government continue to reign there? I would answer that Lower Canada rebelled without other cause than that which plainly enough shows that under existing circumstances, and in the excited state of parties, her present constitution is unfitted for securing the protection and welfare of the people; and that, for a time at least, a peculiar system of government is necessary for that colony. Let such a system then be adopted, and maintained until the time shall arrive when other measures will be safe. It is only requisite that the powers of the special council should be extended and made adequate to all the ends of good government. Lower Canada has now the best form of government that in her present condition she can have. To suppose that this form of government should be for ever continued might not be an agreeable prospect; but for a limited number of years, even though the number might be considerable, the advantages which it would assuredly confer might well reconcile to it all those who should be under its authority. They would find it no unpleasing occupation to compare their actual condition with the past.

In the mean time the true policy would be to give Upper Canada a sea-port by extending her limits to Montreal, or, if there shall appear to be strong objections to that measure, to give to her, by other arrangements which can be devised, the means of adding to her revenue upon imports by sea, to colonize the waste lands in both provinces, to educate the French Canadians, to establish circuit courts among them, to spread the knowledge of the English language, to give by degrees, if not immediately, the laws of England; and then, when Lower Canada has been thus made an English colony, to restore to it the English constitution.

During this period of transition the country will have what is essential to its repose—a strong government; and it will have at the same time what is so much talked of, a cheap government —but a government fully adequate to protect all classes, to redress all grievances, to promote all improvements, and to answer every end for which societies are formed.

The objection which I have sometimes heard urged against placing matters on this footing is, that those inhabitants of Lower Canada who are of British origin could never be content under any other than a representative constitution. If that should, indeed, be their feeling, it could hardly, I think, spring from a regard for their own good; for one would suppose that their past experience of representative government was not calculated to call forth an impatient desire for its speedy restoration. They would tell us that they hope to escape such evils in future from the accession of British-born subjects which the union would introduce into the legislature. But they should remember, in time, that, although it has been very satisfactorily proved that the great mass of the people in Upper Canada are well disposed, yet they are not all so, nor will past experience justify the hope that their choice of representatives will be so discreet as to furnish the requisite majority, not only for keeping down all unreasonable opposition among their Upper Canadian colleagues, but for overcoming the resistance which has impeded the progress of good government in Lower Canada.

It may, perhaps, be the point of honour chiefly which indisposes the British inhabitants of Lower Canada to be governed for a time as a crown colony.

But they might not unreasonably be asked to consider how many of the most valuable foreign possessions of the Crown always have been, and are to this moment, governed upon the same principle; and they might look to another colony not very distant from them, in which they will find the most respectable portion of the population earnestly praying to be delivered from a representative constitution which has of late

years been conferred upon them, and which, instead of proving to them a blessing, has brought with it only dissension and violence. It depends upon circumstances whether such a mode of government is likely to be productive of good or evil. No one will deny that in Lower Canada the circumstances of the country are particularly unfavourable to its operation. It is much, indeed, to be lamented then, if our fellow-subjects of British origin in that province are really so imprudent that they are not only willing, on their own part, to incur again the risk of sacrificing the actual enjoyment of liberty to the name, but that they desire to involve Upper Canada in the same danger with themselves.

If such a feeling does really exist among them, it is probably in a great measure to be ascribed to the inconsiderateness with which, in all public discussions in Parliament, the form of Government at present maintained has been spoken of as arbitrary, and has with little attention to accuracy been called expressly "a despotism." It is certainly not a representative form of constitution, though if it were to be maintained for some years, it would be easy and perhaps advisable to make the special council in part elective. But it is very far from being a despotic Government. It is a written constitution conferred by Parliament, in which the limits of executive and legislative authority are defined, and the laws are as supreme as in any other country; and it is surely a strange description of despotism in which nothing can be done contrary to law, and in which the law, so far from depending on the will of the executive, can only be changed with the concurrence of a council of twenty members, taken from the worthiest, most respectable, and most intelligent inhabitants of the province. It is merely reverting to the form of constitution established by Parliament for the province of Quebec in the year 1774.

Proposed changes in the constitution of

Besides uniting the provinces, the bill now before parliament would introduce into the constitution of the Legislative Council (the upper house of the proposed new legislature) some

the Legislative Council.

novel principles in Government, not only unknown to the constitution, which each province had enjoyed under the British Statute, 31 Geo. III. ch. 31, but equally unknown in any other colony or country.

This is the second material change which the bill would effect; and it certainly seems not a little singular that at the very time when it is proposed to add greatly to the weight of the representative branch of the legislature in Canada, by concentrating it in one assembly more numerous than any other similar body in the British Colonies, it should be thought prudent to diminish the weight of the other branch of the legislature by destroying its claim to independence, and by placing its members, every eight years at the pleasure of the crown, or as the bill is in effect, at the mercy of the Governor.

Such a constitution would be wholly without example.

As the proposition is to construct a Legislative Council, such as exists nowhere, and still less such as any precedent can be found for within the British dominions, it naturally occurs to ask by what necessity the Parliament of this country can feel itself impelled to so important and hazardous an innovation?

Why are such changes proposed?

Who have complained of the Legislative Councils, as they have been hitherto constituted? That party in both provinces which has shown most clearly, *in both*, that their desire and their hope has been to wrest Canada from the crown, and of which the most active and conspicuous leaders have had at least candour enough to avow and even to proclaim publicly in foreign countries, that a republican government had been their aim, and that nothing but that would ever content them.

The present House of Assembly in Upper Canada has earnestly besought Her Majesty that no such changes may be made, but that in this respect the principles of our constitution, as contained in the 31 Geo. III. ch. 31, shall remain inviolate. The people of Upper Canada have expressed no other wish; the British population in Lower Canada have repeatedly expressed their hope that the constitution of the Legislative Council will be upheld; and I think I may venture to say that

no Governor ever selected by the crown to conduct the Government of either province, since their constitution was conferred upon them, with the exception possibly of Lord Gosford and Lord Durham, can ever have recommended any changes of this nature.

Surely they cannot be proposed in deference to the vague calumnies which have been urged against the Legislative Council, by that house of assembly in Lower Canada, whose violent conduct has compelled parliament to suspend the constitution, has driven the sovereign to proclaim martial law, and has thrown upon the crown the expense of defending its authority by arms, against foreign enemies and domestic traitors.

What is the object desired by them?

One cannot but ask himself what is expected from such changes: what new line of conduct is it desired that the Legislative Council should embrace? Certainly it cannot be looked to as a probable advantage that with their constitution thus altered, they would be more inclined hereafter to yield to popular movements, however dangerous may be their tendency, and less able to resist the current which may be sweeping everything to destruction.

Present constitution of the Legislative Council.

As the councils have hitherto been constituted, their members have from the moment of their appointment been, in their character of Legislative Councillors, independent alike of the crown and of the people. They have received no emolument, and the honourable station conferred upon them could never afterwards be taken away. If there has been an authority in the state which could dare to do right, uninfluenced by the fear of offending any power or party, it has been the Legislative Council.

There may have been instances I fear, and especially in Lower Canada, when, descending from their position, and unwilling to stand repeatedly opposed to the Executive Government as well as to the Assembly, in regard to matters of mere political expediency, they have surrendered their own judgment,

and have acquiesced in measures which they felt to be unwise, or to be at least of doubtful expediency.

But these are not the acts of which their opponents have complained, and certainly they are the acts for which the Government could with least reason censure them.

On the other hand it must be said, by all who have a regard to truth, that they have abused no trust, trifled with no man's interest, violated no public right, but have desired steadily to maintain in the provinces the power of the laws, and the legitimate authority of the crown.

Of all the parties to the unhappy contentions which in Lower Canada chiefly have been ruinous to the public welfare, including the Colonial Department, the Local Government, the Councils, and the Assembly, the Legislative Council is precisely that party whose conduct throughout there would be least difficulty in vindicating.

It has never been imputed to them by parliament or by the Government, that they have failed in giving a due support to the rights of the crown on the one hand, or to the principles of the constitution on the other; and if they have refused to move side by side with the Assembly in their ruinous career, that at least can never be justly charged against them as a fault.

In theory, the present constitution of the Legislative Council of the Canadas is, in some respects, less open to exception than that of the corresponding branch of the legislature in any other country under the British crown. The appointment of the members rests exclusively with the Sovereign; they hold their office for life, subject to forfeiture on conviction of high treason, and they are not removable at pleasure.

That the Sovereign will make a corrupt use of his patronage in these appointments is an apprehension which British subjects in those provinces have not entertained, and they would lament to find it entertained by parliament. When once the appointment has been made, the member is as independent of the Crown, as any peer is in England. There is, indeed, this

difference in the constitution, that the seat is not hereditary, at least no hereditary councillors have been made, under the power which the statute 31st Geo. III. confers upon the sovereign. The consequence of that difference is, that none can partake of the authority and privileges of the Legislative Council who have not been specially selected by their sovereign as being worthy of the trust, and qualified for the duty; and it is reasonable to presume that they will retain the good character and the ability which led to the selection. Whether their sons would inherit those qualifications or not must always be doubtful. However, if the making their seats hereditary would be an improvement, that is not one of the improvements proposed.

First change proposed.

The first of the intended changes is, that the governor of the province may have power to appoint Legislative Councillors; and not the sovereign only, as heretofore.

This alteration is surely little calculated to increase the weight of the council, or to give satisfaction either to the popular branch, or to the people at large. The queen is in every way superior to, and is secured from, the influence of such personal or party motives as may be suspected to prevail in the local government. But the governor, it must be admitted, may have a point to carry; and either in the hope of conciliating troublesome opponents, or in order to raise up a new and more effectual opposition to them, when they may possibly be in the right, he may, to speak respectfully, make an ill-advised and imprudent use of his power, by modelling the council according to his own views.

That he should have this power will always be the occasion of jealousy. It is not the case in the other colonial governments, and nothing is less desirable on his own account than that the governor should possess it.

Second change proposed.

The next change proposed in the constitution of the Legislative Council is, that it shall not be in the power of the crown or of the governor to appoint any one to the Legislative Council who shall not have filled, but ceased to hold, the office of judge in the province, or who shall not hold, or have held the office of colonel of militia, or of member of the Executive Council, or of *the Assembly*, or of the Legislative Council of either of the two provinces, or of chairman of any district council, or of mayor of any town or city in the province.

In theory, this seems objectionable, because it is a limitation upon the royal prerogative of such a nature as is without precedent. It circumscribes the field within which the crown must make its selection, and not merely with the view of exacting a property-qualification, which would not be unusual. The person's having been a judge, or a colonel of militia, or a member of another council, proves no more than that the government once had confidence in his character and ability; but surely that confidence would be equally and more directly manifested by the very fact of appointing him to the Legislative Council.

Again there may be other public officers in the Government; for example, the receiver-general, the inspector-general, the secretary of the province, the surveyor-general, who, from their character and talents, may be highly worthy of the confidence of the crown, and may be generally respected by the people, though not applauded by a party. But they could not be appointed to the Executive Council, according to this bill, unless they happened to be also members of the Legislative Council.

Why it should be necessary to make them members of the colonial cabinet, as it were, thereby binding them in the closest connexion with the government before they can be intrusted with the duty of legislation, it seems not easy to understand.

Then, as to the other alternatives, that the person to be appointed must have been a member of the Assembly, or of some district council, or a mayor of some city corporation, these all point to a connexion between this branch of the legislature and

popular suffrage. It is applying indirectly the principle of election, in the constitution of the upper branch of the legislature, contrary to the system established in the mother country. But the people have the exclusive appointment of the members of the other branch, without whose concurrence no law can be made. It tends to destroy the balance of the constitution, and it is contrary to the principles uniformly acted upon in the mother country, and in every colony under the Crown, that they should have directly or indirectly a voice in the composition of the council also. These two branches have between them exclusively the privilege of framing and proposing laws, and it is right, and in a monarchy it is necessary, that they should be wholly independent of each other. Besides, as respects the condition of being, or having been, a member of the Assembly, that proves only that the person has, or had the confidence of the people. But in electing *their* branch, the people do not exact as a condition that the candidate shall have had the confidence of the Crown, nor do they require even that he should have had previously the confidence of the people, for they frequently choose at an election persons who had been rejected before. They are left without any such restrictions in their choice.

Further, as regards the expediency of such a provision—if the person proposed to be appointed should happen to be at the time a member of the Assembly, we must presume that he takes either a right course in politics, or a wrong one.

If a wrong course, it is not fit that the Assembly should be improved at the expense of the Council by transferring him to the latter.

If he takes usually a right course, it would probably seldom be thought judicious to impair the composition of the Assembly by withdrawing him. And as to persons being eligible because they *have been* members of the Assembly, it is reasonable to suppose that, in most cases of their ceasing to be members, the cessation has arisen either from the people having withdrawn the confidence which they had once placed in the individual, or from the individual's having become weary

of public life; neither of which is a recommendation to a seat in the Council.

It is in reality an additional objection to this innovation, as respects all the proposed requisites, that they are so numerous and comprehensive, that the provision has the appearance of being inserted as a pretended restriction rather than as any valuable check. The colonels of militia alone are so numerous that it would have little practical effect; and whenever it did operate, as it sometimes might, to disable the Crown from appointing a gentleman of high character, of large property, and of superior information, who from his having lately removed to the province from Europe, or from some British colony, or who, from disinclination towards the militia service, did not happen to come within the limits which this bill would prescribe to Her Majesty, in every such case it is plain that the effect of the restriction would be injurious to the public interest.

And, indeed, it is difficult to bring oneself to feel the value of a regulation which, if it had existed before the late rebellions, would have opened the legislative councils to the M'Kenzies, the Papineaus, the Nelsons, and all who had acquired a base popularity by insulting their Sovereign and poisoning the public mind, while it might have closed them against the most worthy, intelligent, loyal, and opulent inhabitant of the province, because his modesty or his honour unfitted him for the warfare by which the others had attained to their bad eminence.

Third change proposed.

A *third* innovation proposed in the constitution of the Council is, that the members shall hold their office but for eight years, and at the end of that time may be re-appointed or not, at the pleasure of the Government.

This appears to be a new invention in government, adopted, apparently, from the practice in some joint-stock companies. It certainly would tend to sink as low as it could well be sunk the character of the members of the Legislative Council for independence of conduct; and it is difficult to understand in what

point of view it can have been thought to be an improvement upon the constitution.

Instead of holding their seats, as they now do, on a tenure that enables them fearlessly to stand between their fellow-subjects and any danger that may threaten them, either from an arbitrary government on the one hand, or from a rash and unwise popular body on the other, they would be fairly warned that, during the *eight years*, they must so shape their course as to give no offence.

When the period should come round, if by an honest discharge of their duty they shall have drawn upon themselves the denunciations of the Assembly, a weak governor will shrink from re-appointing them from timidity: if, by resisting some unwise and injurious proposition of the Government, they shall have incurred his displeasure, an arbitrary Governor would abandon them from resentment.

During the whole period of eight years, they would be apt to keep their thoughts fixed upon its termination, as the members of the Assembly are charged with keeping the hustings in view; but with this striking difference, that when the period has arrived for the popular candidate surrendering his trust, he has before him a fair and open field of competition; he can throw himself openly and publicly upon the honour, the sense of justice of his constituents; he can vindicate his conduct to their face; his actions are to be judged of, not by one party in politics only, but by all; and he stands or falls by the estimate of thousands of his fellow-subjects.

But it would not be so with the councillor of eight years service under this bill. His fault, and his only fault, might be that by a firm, and manly, and conscientious discharge of his duty he had made enemies of the ambitious, the vindictive, or the disloyal. It will be sufficient that a governor may imagine he can strengthen his influence by conceding to popular clamour the point of his exclusion from the council. He can bring his merit to no test: his vindication, if he were to offer it, might avail nothing. It would be only necessary to say to him, "You

are not dismissed by me, the constitution dismisses you. I shall merely decline to re-appoint you." A few such lessons might be reasonably expected to hold out a warning to others, not, however, a warning that could be salutary in the eyes of those who revere their constitution and laws, and can appreciate the value of unbending integrity in public men.

There would also be this further and striking disadvantage in such a system,—that it would throughout the period of his service expose the legislative councillor to the imputation and suspicion of acting upon unworthy motives, when in truth he might be voting in the strictest accordance with his judgment.

A great portion of mankind seem to be incapable of appreciating a disinterested course of conduct; and by those who call themselves patriots, a loyal attachment to the Crown is usually attributed to any other cause than to an honest sense of duty. It would be always declared by such persons that the votes given in the Legislative Council in support of the Government were given under the fear of future exclusion from the House. How far this would tend to raise the character of that branch of the Legislature, and to moderate the clamour of the discontented, there can be little difficulty in determining.

Fourth change proposed.

There is yet another change proposed in the constitution of the council, which, though it may seem immaterial, is not in reality undeserving of notice. It is, that the members of the Legislative Council shall have it in their power to resign their seats.

I do not consider this an improvement. In the progress of public affairs there are critical moments when it is not exactly fair towards those whom a high sense of duty may keep at all hazards at their post, that others, and those perhaps the very persons whose want of judgment or other infirmity of character may have had a great hand in producing the trouble, should be allowed to consult their ease by withdrawing from their duty, and abandoning their colleagues to the full force of the

unpopularity which it may be supposed will attach to their upright performance of their trust.

A peer of Parliament cannot resign. In all cases of this description, reasonable allowance is ever made for a failure in attendance, where circumstances would make it inconvenient; but if, in a body of this kind, the door be once open to resignation, the time may arrive when the public will be told of forced resignations, which would go far in impairing confidence in the independence of that branch of the Legislature.

Proposed institution of elective district councils.

After uniting the provinces, and making those alterations in the constitution of the Legislative Council which have just been discussed, the next great change which the bill would effect is by the creation of elective district councils, with various and extensive powers, including among them the power of checking the proceedings of the Provincial Legislature.

I shall have occasion to make some remarks on this branch of the measure when I come to examine the clauses of the bill in detail; and, I believe, I might very safely content myself with a short discussion of the principles which it involves; for I cannot think it possible that this provision of elective councils, though the details occupy a fourth part of the bill which has been introduced, will, after due consideration, be retained in any act that shall be passed for the future government of Canada.

Without example anywhere

The institution of such councils, with unlimited power of taxation, extending not merely to towns, but over large districts of territory, and for such objects as the making canals and railroads, unchecked too by anything like a second branch or Upper House of Legislature, such an institution would be altogether experimental, and unsanctioned by any precedent within the British dominions.

No desire for such councils in Upper Canada.

In Upper Canada there is no room for such a contrivance. The frame of her civil polity is complete without it; as much so as that of England or of any British colony, or of the United

States, or of France, Belgium, or Holland, or any free country in the world. She has her legislature framed upon the model of that of the mother country as to its powers, responsibilities, and duties. She has her divisions into districts and counties, and her local magistracy, with power given to them by law for imposing taxes of a limited and moderate amount, to be applied to certain purposes which are specified, and which do not by any means extend to the formation of rail-roads or canals.

No greater necessity for them there than in England.

The laws of the province provide, also, for the administration of various matters of detail among the inhabitants of the several townships, such as regulating enclosures, the impounding of cattle, the performance of statute labour on the highways, &c., by empowering the people to elect officers annually, and, in some cases, to makes rules upon these points.

It has never, that I am aware of, been desired in England that, in addition to the constitutional authorities now existing, there should be several elective bodies, returned by general suffrage, each having power to do various matters which rest at present with Parliament exclusively, such as making rail-roads and canals, making, stopping up, or diverting highways, regulating the police, &c., including a power of imposing taxes (by each council respectively) over a fifth part of the kingdom, and unlimited in amount.

And as this, I believe, has never been required in England, so I assert with confidence that it has been as little thought of or desired in Upper Canada. I have lived in that province all my life, and for the last eighteen years have been a member of its Legislature: I never heard the expediency of such a system suggested by any member of either house, by any party in politics, in the Assembly, or out of it, or by any number of the inhabitants, or by any individual.

And I may venture, I think, to add, that the Government of this country has never been at any time requested by any public authority in Upper Canada, or by any part of its population, to establish such Councils among them, or anything of the same nature, or for the same purpose, and that no Governor

of the province, since the day it had a constitution, has ever recommended such a measure.

So far from there having been any good reason given for supposing that such innovation would be acceptable in Upper Canada, it happens that an experiment was made a few years ago there, of placing considerable power in the hands of commissioners to be elected by the people within each small subdivision of territory, in respect to roads and other matters, which in that province, as in England, had been usually managed through the local magistracy. But the measure gave almost universal dissatisfaction; and after a short experience of its effects, the Legislature were petitioned to repeal the law, and the public were impatient till matters were restored to their former footing.

The feelings of the people of Upper Canada are not in favour of these rash departures from the British constitution, and it ought to be satisfactory to their fellow-subjects in this country that they have no such craving. They have, really, no longing for the extension of the democratic principle: they are content with following the example of other countries by introducing elective municipal bodies into towns for regulating their internal affairs under proper restrictions; but they are wise enough to desire that all the rest should be left to their Legislature and to their Government.

It is true that in Lower Canada the Assembly, consisting chiefly of persons who had been accustomed to other laws and institutions, did not in the first instance concur in establishing such a system of local administration as, under the same form of constitution, was established in Upper Canada; and their successors have hitherto failed to do so. The consequence is that there are not in that province any internal assessments as in Upper Canada, corresponding with the county rates in England, and serving for the repair of roads and bridges, the building and maintaining gaols, and various other local objects. These charges are all left to be defrayed from the general pro-

vincial revenue, which has, without doubt, been a political error in the Assembly.

It is equally true that that body has shown but little enterprise in applying the public revenue to objects of great and general importance; and it seems to have occurred not, however, I think, to any one in the colony, that, as a remedy for these evils, it would be a wise measure to create such elective councils as are proposed in this bill. If the idea were a happy one as regards Lower Canada, it does not follow that it would be wise to apply the same system to Upper Canada, where no reason for it has ever existed; but I do not see the value of it, even as Lower Canada is concerned. If the Assembly there has not done what was desirable in these matters hitherto, what has been the cause? We are told that the French Canadian members were, like their countrymen who returned them, full of narrow prejudices, and have for that reason failed in their duty. But the district councils are to be elected by the very people who are to elect the members of the Assembly; and it is not easy to understand why their representatives in the lesser body should be more worthy to be trusted than their representatives in the greater. On the contrary, it is palpably clear that in those districts which would be chiefly French, the want of enterprise complained of might be expected to prevail exclusively and fatally in these elective councils; while the representatives of the same districts in the Assembly would have some possible chance of being overpowered there by the votes of others more enlightened.

It is proposed by the bill to divide the whole of Canada into five districts, within each of which one of these elective councils is to be established, which will thus have legislative power in many very important particulars over a territory larger than a dozen English counties.

Objections.

The objections to this scheme are, that, as applied in this way to the agricultural population, and throughout the whole land, such an institution has no precedent in the British domi-

nions ;—that the powers and duties of such councils could not fail to bring them most inconveniently into collision with the provincial legislature and the local magistracy ;—that the elections to these councils, which would be recurring annually throughout the whole colony, would keep the country in a perpetual state of agitation and excitement ;—that they are wholly unnecessary for any purpose in Upper Canada ;—and if, from peculiar circumstances, something of the kind seems to be requisite in Lower Canada, it is plain that the institution of councils, such as are proposed by this bill, would very imperfectly answer the object, and, in the purely French settlements, not at all. It is evident, also, that they would subject the people to great expense ; for I have little doubt that more would be spent in the charges consequent upon these councils than is now levied by assessment upon the inhabitants for all local purposes put together—I speak here with reference to Upper Canada, where alone there are any such assessments.

But a more decisive objection still is, that a power of legislation in such important matters as the making canals and rail-roads, and regulating the police of the whole country, could not, with any degree of prudence or propriety, be intrusted to the wisdom and disinterestedness of a single elective assembly. Without check from another body, which might be less liable to be influenced by temporary causes of excitement, and more independent of popular caprices, they would assuredly soon become anything but a blessing to the community.

In the report made by Lord Durham to her Majesty, it is represented, in some parts, and insinuated in others, that in both provinces the Legislature, or at least the Assembly, have made an intemperate, and even a corrupt, use of the powers which they have been permitted to exercise. In most instances, what has been thus stated in the report is capable of being very clearly disproved ; and, in justice to Lord Durham, it may therefore be presumed, that, if his report had been preceded by such an inquiry as is usually considered necessary to

the attainment of truth, he could not have suffered himself to make the statements which he has done.

Still, with the impression upon his mind that the Legislature had so acted, and that the Assembly were open to such dishonest impulses, it is surprising that his Lordship could think it judicious to recommend, as he has done in his report, the conferring extensive powers of legislation upon a single elective body, to be returned by the same constituency, and to be left without such balances and checks as in all countries are considered to be necessary for the protection of the public.

Why his lordship should suppose that the same population which, according to his report, had been for years electing knaves to the Assembly, should elect honest men to these councils, it is not easy to comprehend.

The fox in the fable objected to having the swarm of flies driven away that were filling themselves with his blood, because he apprehended that a new swarm would succeed to them, which, being active and empty, would soon take from him the little he had left. This bill, with less consideration for the people, would introduce a second swarm to prey (as the report would have us to apprehend) upon the life-blood of the commonwealth, without driving away the first.

It is generally difficult to predict with certainty what reception a political measure will meet with from the public in the first instance; but I have that opinion of the intelligent portion of the British population in Lower Canada, that I do not imagine this part of the bill establishing district councils can find any favour with them, notwithstanding the peculiar disadvantages under which they have undoubtedly laboured. I believe they would very generally regard the remedy as being much worse than the disease.

It would, I confess, perfectly astonish me to find that it is approved of by any party in Upper Canada, be their general political opinions what they may. They will hardly, I think, find it possible to reconcile themselves to the singular experi-

ment of having a half legislature, in addition to their whole one —both having power to tax them to an unlimited amount, for precisely the same objects,—and the one having authority to stop up or divert the canals and rail-roads which the other has constructed. They will not fail, I should think, to ask themselves, if the engrafting such a device upon the British constitution is likely to be an improvement, why the experiment has not been made in England, and why this island, besides having its parliament, has not also its five elective councils—each having legislative authority over a number of counties, and all being employed simultaneously with the Parliament in taxing the people, and constructing rail-roads and canals throughout the kingdom?

It may seem to some persons that any objections against intrusting the power of legislation in important matters to a single elective body must apply equally to the special council which now makes laws for Lower Canada. But it must be remembered, that the members of that council are appointed by the Crown, and, therefore, though there may possibly be here and there an accidental exception, they are sure to be, in general, men of integrity and of sound understanding, as well as respectable in point of talent and property. They are, besides, under no necessity of resorting to unworthy arts for obtaining their seats, nor will they, in order to continue in them, be under any temptation to promote injurious excitement, and to keep up popular delusions.

Additional powers proposed to be given to the Legislature.

Another material change which this bill would make in the constitution of the Canadas, and it is the last which I shall remark upon, is one that may appear unimportant to some persons, but not to any whose judgment and experience enable them to estimate its possible consequences. I allude to those provisions in the bill which would empower the new Colonial Legislature to pass laws respecting their prorogation and dissolution, limiting thereby a prerogative of the Crown, which

has been always acknowledged in Canada, and the other colonies, as freely as in England.

An example for an alteration of this kind may be found in the constitution of the American republic, as well as for many other innovations which would be altogether unsuitable to a monarchy. There, I think, the session of Congress must terminate in some years, on a certain day of a certain month, whether the public business be finished or not; and in other years the Congress may, and must be allowed to sit, not as long as the executive chooses, but as long as the Congress itself chooses. I doubt whether all Americans would agree in pronouncing this to be an advantage; and at any rate most persons not Americans who had observed the closing scenes of Congress, particularly within the last two or three years, would be apt, I think, to form rather a strong opinion to the contrary.

In England, and throughout the British dominions, the Legislature, as much as any other department of the state, forms a part of the Government, of which the King is the acknowledged head.

The King calls them together because he requires their advice and assistance in the discharge of his duty as the head of the nation; and it is in accordance with this principle that he should have a control over the duration of the session.

This applies merely to the question of *prerogation*. The prerogative of the Crown, as it applies to the dissolution of the representative branch is of greater importance. At present it is unrestrained; but as this bill would expressly give power to the Colonial Legislature to pass laws upon that point, it must follow that it is contemplated as fit that the prerogative of dissolution should not continue in the Crown as unlimited as it now does.

But this prerogative of the Crown is part of the law and constitution of Parliament, as ancient and as well defined as any other. It is no usurpation of the Sovereign; and the

people of Canada are not impatient under it. It seems singular, therefore, that it should be proposed to shake it, at the present juncture above all others; for there are colonies of the Crown (I mean in the West Indies) where this prerogative, if I mistake not, has been not unfrequently resorted to of late years, in the very hope of obtaining assemblies that would support measures which had been suggested by the Ministers of the Crown.

In the Canadas this prerogative has been very sparingly used; and I imagine that the framers of this bill had no other instance of it in their recollection than the one which occurred two or three years ago in Upper Canada, which was very remarkable, both in respect to the occasion and the consequences of the measure.

In 1836, the Assembly, in order to reduce the Government to an implicit compliance with their will, refused to vote a shilling to support the ordinary charges of the civil government; and at the same time, they passed resolutions encouraging and applauding the party in Lower Canada who were evidently driving the people to the most desperate courses. Fortunately the King had a representative in the government of the province, who saw clearly the course which his duty to the country demanded, and who had the manliness and honesty not to shrink from it. He dissolved the Assembly; thousands of their constituents had, by public addresses, entreated him to do so; and a great majority of the population rejoiced to see the prerogative used, which the constitution had placed in his hands in order to meet such exigencies.

The consequence was, that, by the election of the people, an Assembly was substituted whose conduct, in the time of trial, received the approbation of their Sovereign, and called forth the warmest expressions of thankfulness from the other loyal British colonies.

It need hardly be asked, whether the Assembly which had been dissolved would have passed those laws which enabled

the Government to meet the dangers of the time; laws which the Ministers of the Crown have approved of and confirmed, and without which the guilty might have escaped punishment and the loyal would not have been adequately protected.

It seems almost as needless to inquire whether it can possibly be the opinion of the Parliament, or of the people of England, that a remedy ought not to remain in the power of the Sovereign and his representative, of which the advantage, or rather the necessity, has been so signally demonstrated, and which, while it is thought fit to be retained in England, must appear to be at least as necessary for protecting the public interests in a remote possession of the Crown.

The British statute, 31 Geo. III., ch. 31, expressly confers the prerogative in question upon the governors of the respective provinces, and it was made an article of the constitution over which no power was given to the Colonial Legislature.

That statute was framed in a wise spirit of adherence to the well-established principles of British government. It discovers no distrust of the sufficiency of British institutions for protecting the liberties and promoting the happiness of the people. I know not what deviation from it is likely to be found an improvement. The people of Upper Canada, if left to themselves, I am persuaded, would desire to retain it as it stands; and certainly one of the last innovations that should be admitted is that proposition which I have just now discussed.

CHAPTER III.

REMARKS UPON THE DETAILS OF THE BILL.

HAVING thus pointed out the principal changes which the bill would introduce into the constitution of the Canadas, and having discussed their expediency, I proceed, as I have proposed, to examine how far the bill is judiciously framed for accomplishing its objects, supposing, for a moment, that these were such as it would be wise for Parliament to sanction.

For this purpose the most natural and easy method will be to take the bill in the order of its clauses.

Repeal of former Acts.

1*st Clause.*—It would appear at first sight to be the intention of the framers of this bill, from their proposing to repeal the statute 1 and 2 William IV., c. 23, that the right of appropriating the duties levied under the British statute 14 Geo. III., c. 88, should revert to the Crown; but this, I believe, is not meant. No allusion to such a change is made in the preamble, although it would certainly be a very important change, whether judicious or not, and I suppose it, therefore, to be intended that the series of clauses respecting finance, beginning with clause 50, should have the effect virtually of giving the appropriation of these duties to the Legislature, if any surplus should remain from that fund over the amount of the permanent civil-list, which the arbitrators are to settle. If this be intended, it should, I think, be more plainly expressed, and not left to any doubtful construction, or in other words, to the presumed legal effect of the apparent repugnance between the 14 Geo. III., c. 88, and the clauses which have been referred to. And besides, if it be meant that the duties levied under 14 Geo. III., c. 88, shall stand on the same footing as to appropriation with the duties levied under legislative acts of either province, as they would seem to do by

their being all thrown into one consolidated fund, then the necessity is not apparent for repealing the statute 1 and 2 William IV., c. 23.

I doubt whether the repeal which would be effected by this clause has been in other respects carefully considered.

If the statute 3 Geo. IV., c. 119, be examined, it will be found that there are other portions of it besides that mentioned in this clause, which should also be repealed, if the two provinces were to be united; and I rather think that the period for another arbitration and division of duties under that statute will come round before the repeal intended by this clause would take effect: which circumstance, and the effect of it, require to be considered.

Annexation of Gaspé and Magdalen Islands to New Brunswick.

2*nd Clause* begins with a recital which applies only to the Magdalen Islands, and concludes with an enactment which extends to a much larger and more important territory, namely, the district and county of Gaspé. As it is an important change for the inhabitants of a country to place them under a new government and jurisdiction, it would seem proper that the motives for detaching them from Lower Canada, which I believe to be reasonable and sufficient, should be stated in the Act. But in this clause it is merely recited that the coasts of *Labrador*, with the islands of *Anticosti* and *Madelaine*, "had *been made part of the province of Quebec during his late Majesty's pleasure*," which constitutes no reason for passing an act annexing the islands of Madelaine *and the district of Gaspé* to the province of New Brunswick; neither does the allusion to these territories, in the general preamble of the bill, state any ground upon which the change is thought to be expedient.

But there appears to be an omission in this part of the bill of a more important kind. The merely providing "that these territories shall form part of the Province and Government of New Brunswick," can hardly be sufficient. To say nothing of the islands of Madelaine, the district of Gaspé is a large circle of territory containing many inhabitants, and when these are

proposed to be taken from the province to which they now belong, and annexed to another, care should be taken to make such provision as would ensure the due administration of justice among them, and their fair participation in the institutions of the country to which they are to be attached. It is true that the Legislature of New Brunswick could pass the necessary enactments for these purposes before the 1st of January, 1842, when this Act would take effect; but it is not certain that they would do so. Differences of opinion among the several branches of the Legislature might occasion delay, and their measures might not meet with the sanction of Her Majesty and the Privy Council. The risk of this inconvenience could only be justified by a necessity which, in this instance, does not seem to exist. Until the new territories should be made to form part of some county in New Brunswick, they would not be represented in the Assembly, under the laws existing in that province, and, what is more urgent, the jurisdiction of the ordinary civil and criminal courts would not, as I apprehend, embrace them. It would, therefore, seem better that the Act should contain on the face of it such a provision as would not leave the administration of justice and all civil rights in abeyance—in other words, the bill should have made the added territory parts of some county of New Brunswick.

I am not aware what may be the particular reasons for attaching the Magdalen Islands to the province of New Brunswick, rather than to Prince Edward's Island, or to Nova Scotia, by incorporating them with Cape Breton; either of which arrangements would seem to be more convenient, looking only at relative position.

Name of the "United Province."

3rd Clause.—I do not see why the name of the proposed province of Canada should be incumbered with the word "*United.*" If that part of the statute 31 Geo. III. c. 31, which regards the separation of the provinces, is to be repealed, Canada then stands, as it stood before, one province; and why should it not be called simply "The Province of Canada?" The effect of this bill would not be, as in the case of Ireland,

to unite one distinct country with another in some of the arrangements of government merely, leaving them distinct as to other purposes, and by no means putting an end to their individuality. It makes the whole actually *one* country.

Division of Canada into Districts.

4th Clause.—I thought at first that it was intended by the bill that the division of the whole territory into five districts should have reference to nothing but the elections to the Assembly; and if that had been the intention, then this new division of the provinces would not clash with the divisions which already exist, because the present division into districts has nothing to do in either province with elections to the Assembly, the members being returned by counties, ridings, and towns, and not by districts. But on looking through the bill it is clear that the proposed division of the whole territory of Canada into five districts is meant to effect other objects also; and this being the case, I apprehend that this part of the bill has been framed without sufficient regard to the existing state of things in the two provinces, and without reflecting duly upon the confusion and difficulties which such a double organization of the country would create.

Lower Canada is divided at present, I believe, into five districts, one of which would by this Act be taken away and attached to New Brunswick: Upper Canada has for many years been divided into twelve districts, and lately the convenience of the inhabitants, as regards the administration of justice, has induced the Legislature to increase the number of districts, by subdividing them, so that at present I think there are not less than *twenty*. Some of these, indeed, are not yet actually become districts, but will be such as soon as their gaols and court-houses, which are now in progress, shall be completed.

Now, in Upper Canada, this division into districts is similar in its object and effects to the division of England into counties, except that it has no reference to the representation in the Assembly, each *district* being for that purpose subdivided into *counties*. In other respects the districts of Upper Canada correspond in their nature and design

with English counties ; and our adoption of the English system of civil and criminal jurisprudence has made the resemblance close. In each of the districts of Upper Canada (now more than twelve in number) there is, as in English counties, a body of magistrates commissioned by the crown to act for that district. They have their courts of Quarter-Sessions, and the officers connected with them. Then there are courts of Gaol-Delivery, and of Assize and Nisi-Prius twice in the year, holden before judges of the Queen's Bench, who go the Circuit as in England; and each district has its sheriff, whose duties are the same as those of the sheriff of an English county. Besides, there is in each district a civil court for the trial of inferior causes, and there are other district offices connected with education, the collection of the revenue, settlement of disputed boundaries, and other matters.

To support the expense of gaols, the maintenance of prisoners, repairs of roads, and various other objects, district assessments have been imposed by statutes, and these are paid into the hands of a district officer, and are applied and accounted for according to law, by the justices in sessions, in the same manner as the justices in England direct the expenditure of county-rates. Confining my observations, on this point, to Upper Canada, I cannot clearly make out from this bill whether it is intended that this division into districts, as it now stands in Upper Canada, shall continue to exist there, or whether it shall entirely cease, and give place to the new division contemplated in the 4th clause, which would give but five districts to the whole of Canada, and, consequently, but two, or two and a half, or at most three, to that portion of it which now composes Upper Canada. It is, perhaps, designed that the new division into districts shall take the place entirely of the present division ; for I observe that the new districts are not to be called electoral districts merely, nor are the objects of the division such as refer to elections only.

If, however, it be meant that the old division shall still continue, then there would seem to be an unnecessary confusion

in having a double division of the same territory into districts; and, moreover, there would seem to be, in several respects, a double provision for the same object. For instance, the 36th clause of this bill speaks of the "*treasurer of the district,*" and of the "*district funds,*" there being already, in Upper Canada, a district treasurer, and district funds, in each of the present idstricts, which, however, are not those contemplated by this bill; so that there would be a double arrangement of district treasurers and of district funds.

Then the 44th and 45th clauses provide for the establishment within each of the districts, according to the proposed new arrangements, of an elective council, which shall have power to make ordinances for making and repairing roads and bridges, and for stopping up, altering, and diverting roads; and the same council is to have power to raise money *in each district* by assessment, and to apply it "in or towards the payment of all necessary expenses incurred, or estimated as likely to be incurred for the current year, in respect of the local government of the said district, either on account of the lawful expenses of returning officers at elections of members for the district council, or the salaries of officers, or otherwise howsoever."

Now, within each of the existing districts of Upper Canada, the justices of the peace have power, by statute, in respect to "the making and repairing highways and bridges, and the stopping up and diverting roads;"—and for these and other objects connected with the local government, they have power to raise assessments upon the property of the inhabitants to a limited extent, and to apply the moneys thus levied.

It could hardly have been intended, I think, to have this double provision for the same objects, without at least taking care to prevent the probability of an inconvenient clashing of authority; and, on the other hand, it does not seem probable that, in framing the bill, it could have been deliberately intended that some of the most important powers of the civil authorities of the several districts, as they are now constituted,

the regulation of which forms one of the leading objects of the provincial statute-book, were to be taken, by mere construction and inference, to have dropped from the hands of their former possessors, without any allusion having been made to these powers in the new act, or any consideration apparently given to the previously existing order of things. It would have been thought necessary to take care that the inhabitants should not be left exposed to be doubly taxed by two independent bodies for the same objects, and the probability of confusion arising from the conflict of authority would, one must suppose, have been guarded against, by expressly removing from the one body the power which it was intended to confer upon the other.

As nothing of this kind appears in the bill, I think it possible, though not certain, that the intention may be, that the present division into districts shall cease in both provinces when the new act comes into effect.

But if that be so, there can be no question, as regards Upper Canada at least, that the bill, in its present form, ought never to become a law; for, 1st, it makes no provision whatever for the administration of justice within Quebec, Montreal, Toronto, and Kingston, which, by the 4th clause, are to be excepted out of the five districts; 2ndly, it makes no provision for the future discharge of duties which are now performed by the various civil authorities in each of the several districts, and which are not of a nature to be superintended by a merely legislative body like the district councils; 3rdly, under the 51st clause, the councils would have authority to appropriate the district funds raised under the present laws, and so the magistrates would be left without the means of performing the duties now intrusted to them; and, 4thly, which is even more material, it is wholly out of the question that this range of duties, including the administration of justice, civil and criminal, can be discharged within such extensive circles of territory as are proposed by the act, with a due regard to the interests and convenience of the inhabitants. The population of Upper Canada have always urged upon the Legislature such a division

of the province into districts as would bring the administration of justice, and other matters of local concern, within a convenient compass; and, in deference to this prevailing wish, the districts have been made smaller, and more numerous, in proportion as roads, population, and revenue, would admit of the subdivision.

The twenty districts now existing cover a space not less than the eighty-five counties into which Great Britain is divided for purposes exactly similar; and when the state of roads, and of accommodation of all kinds, in the two countries is compared, it cannot be believed for a moment that the people of Upper Canada can be content with a measure which would substitute two or three districts for the twenty which they now have.

The inconvenience, when it is stated, is so obvious, that it seems reasonable to conclude, either that it has escaped due consideration, or that it is not the intention of the bill (upon which point I am doubtful) to supersede the existing division of the provinces into districts. If the latter supposition be the correct one, then I think the intention should have been made plain, by adverting in the bill to the present arrangement of districts, and by enacting that "the province of Canada should, for the purposes expressed in the act, be divided into five districts;" but that, for all other purposes, the existing division into districts should continue as heretofore. The bill might then have provided, as it now does, for the vesting in the district council the power to regulate certain matters which have hitherto rested with the justices in session; and then it might have declared that thenceforward no such power or authority should be exercised by the justices, or in any other manner than as provided in the act; but that, in other respects, and for all other purposes, the powers and authority of the justices, and other public officers within the several districts, should continue as before the passing of the act, until otherwise provided by the Legislature.

I do not mean to say that the institution of district councils,

for the purposes and with the powers contemplated by this bill, could have been provided for in any form of words that would have made it in my judgment an advisable measure, so far as it would apply to Upper Canada, to which province my remarks are confined.

On the contrary, I think the whole project unfit to be adopted; and I believe that it must appear such to the inhabitants of Upper Canada on the first consideration of the bill. That experience would show it to be so I have not the least doubt, and my reasons for that opinion have been stated in another part of this paper.

Representation in the Assembly.

5th Clause.—This is a very important clause; for upon the operation of this provision it depends whether those who are favourable to the measure of uniting the provinces would be likely to see those advantages realised which they have been led to expect from it.

They have always avowedly promised themselves such a measure as would in its operation secure a decided preponderance of British interests and feelings in the Legislature. It is this clause which lays the foundation of the new constitution, so far as this result is concerned. The plan proposed is, that, immediately after the act passes, five arbitrators shall be appointed, or rather four arbitrators and an umpire, two of the former to be chosen by the now existing legislature of each province, and the umpire to be named by those four. These arbitrators are to parcel out the united province into five districts, each of which districts it is enacted by subsequent clauses shall be subdivided by the same arbitrators into nine electoral divisions, making in all forty-five electoral divisions; from each one of which two members are to be elected to serve in the Assembly. To these are to be added two members for each of the towns of Quebec, Montreal, Kingston, and Toronto; so that, in the first instance, the Assembly will consist of ninety-eight members.

By giving to the arbitrators the power of creating the electoral divisions, and assigning to them their boundaries, the bill leaves it to depend on their discretion how the Assembly shall

in the first instance, at least, be composed—except that it places the following restrictions upon them in the exercise of their discretion, viz. :—

First.—That they shall so form their districts as to make the number of electoral divisions in the province of Lower Canada as nearly as may be equal to the number of such electoral divisions in the province of Upper Canada.—(5th clause.)

Secondly.—That, in forming the electoral divisions, regard shall be had, so far as is practicable, to the general principles established by the statute which now regulates the number of representatives in Upper Canada, so far as the same determine or relate to the proportions to be observed between the number of the representatives for each of the counties therein mentioned, and the extent of the population and territory comprised in every such county.—(7th clause.)

Thirdly.—That the determination of the arbitrators shall not be binding and conclusive until it has received the sanction of Her Majesty in Council, which sanction cannot be given to it until thirty days after it has been laid before both Houses of Parliament. (See 65th clause, which appears to extend to this and to every other matter referred by the act to arbitrators.)

We must consider, then, what prospect this method of settling the representation affords of a satisfactory result. First, as regards the proceeding by arbitration; and, secondly, as it respects the restrictions under which the arbitrators are placed.

Upon the first point, it seems to me that the method of proceeding by arbitration is obviously liable to very great objections.

It is either hoped and intended that the measure of creating one legislature for the whole of Canada shall result in giving to the friends of British connexion a decided preponderance over the French Canadians, or that is *not* the hope and intention.

Upon the latter supposition, I believe few who are now so

earnestly promoting the union would be found among its advocates; nor do I suppose that it would be the desire of Parliament or of the Government to accomplish it.

Assuming then that the Government of the mother country has this result in view, and that it is, as I believe it to be, the main inducement to the measure, then surely it must be wise and prudent to propose such an enactment as should with the greatest certainty attain the object, and attain it by means the least invidious or exceptionable.

The Government knows what population Lower Canada contains, and they know also the population of Upper Canada. The extent of the several counties in both provinces; the manner in which the population is distributed among them; how that population is at present composed; in what proportions the representation is distributed; upon what principles and by what laws it is regulated;—all these circumstances are well known to the Government. They know also, or they have the means of knowing, in what comparative ratio the population and trade of each province have increased; and what calculation it is reasonable to make in respect to the future, considering the climate, extent, position, and natural advantages of the respective countries.

Upon these points, ample means of information are in possession of the Government, in the journals of the Legislature and the documents appended to them, in statistical accounts published from time to time in each province, in the works of intelligent travellers, and compilers, and in the official reports procured at considerable expense from a succession of commissioners employed by the Government, namely, of Mr. Richards, Colonel Cockburn, Lord Gosford and his colleagues, and Lord Durham.

If, in addition to the information supplied from these sources, some further facts require to be ascertained, all means of inquiry both in England and in the colonies are open; and I know no good ground for supposing that the materials for making a just apportionment of the representation are not perfectly attain-

able by the Government as well as by arbitrators to be appointed under the act.

If the electoral divisions are to be formed without reference to distinction of races, or to political character and conduct, upon estimates based only on a combined view of population, and extent and value of property, the Government and Parliament, I conceive, must have ample means of constructing a just scale. If, on the other hand, political events and prospects are to be taken into account, then surely these are considerations with which the Government and Parliament of this country are qualified and entitled to deal; and, whether we regard what has passed, or look to the present or the future, it is in those quarters certainly that such considerations would be most properly and safely disposed of.

Then why devolve upon arbitrators a discretionary power of this kind, upon the right exercise of which it is certain that everything must depend? Why does Parliament interfere, but for the very purpose of securing to the loyal inhabitants of these provinces, and of the other British colonies in America, whose safety is obviously bound up in the future fortunes of the Canadas, the continuance of their connexion with England, and the peaceful enjoyment of their lives and properties, and for the further purpose of guarding the integrity of the empire from a recurrence of such dangers as have lately threatened it? And why is the constitution of Lower Canada at this moment suspended, but from the necessity of consulting this protection and security?

Is it then wise, under such circumstances, to incur the risk of failure through the want of judgment, firmness, or integrity in others, when the object is one of such absolute necessity, and is at the same time one which the Government and Parliament, taking the responsibility upon themselves, can by direct and conclusive measures place beyond the reach of doubt?

Besides the uncertainty of attaining a satisfactory result through an arbitration, it is prudent to consider that this method of proceeding, if it is to answer the desired object, will be

beyond measure the most invidious course, and such as must be attended with much greater difficulty than the other.

The French population in Lower Canada are reckoned at 450,000, and the British inhabitants of that province have complained of them as being violently hostile to the Crown and to their British fellow-subjects; and it cannot be denied that they have recently found them enemies, and have had to encounter them as such. The population of Upper Canada, it is probable, entertain generally the same conviction, with regard to the hostile feeling of the French Canadians; and I believe that among them, as well as among the British inhabitants of Lower Canada, there is a strong impression that this enmity which they deplore is deeply seated, and is not likely to be transient. I venture for my own part to take a less unfavourable and discouraging view of the character of the French Canadians, making a great allowance (possibly too great) for the extraordinary efforts used to mislead them, and for the effect given to those efforts through a long series of years by a policy on the part of the Home Government kindly meant, but evidently injudicious, and persevered in, unfortunately, after it had become manifest to all persons in the colonies that it must lead to dangerous results.

It signifies little, however, what any individual may venture to hope or believe in this respect, for, even if the Government and Parliament of this country should take, for the time, this more agreeable view of the subject, they could scarcely venture, after all that has occurred, to act upon it in disregard of the prevailing impression in the provinces, and especially since Lord Durham, in his capacity of High Commissioner, after inquiry and observation on the spot, has supported the most unfavourable and hopeless view of the disposition of the French Canadians, so fully and strongly, and in language so positive and emphatic, that one can scarcely read it without feeling a secret hope that a picture so darkly shaded might, without doing violence to truth, have been made less gloomy.

Under the circumstances as they exist, I do not believe that Parliament, while entertaining the present bill, would willingly contemplate as the probable effect of it that it would expose the interests and safety of British subjects in these colonies, and the peace of the empire, to the danger which they must incur if a legislature should be constituted for Canada in which the representatives of these 450,000 French would either have the ascendancy, or be so nearly equal in number to the others as to enable them to keep up an obstinate contest which should make the issue of every important public question in a manner doubtful, or that, by combining, as in their present temper they certainly would, with whatever other portion of the Assembly they might find ready from different motives to embarrass and obstruct the government, they might at any time pervert the free institutions bestowed upon them to purposes destructive of the public welfare.

I believe that all who, either in this country or in Canada, have been urging the measure of an union, (of which number I never have been one,) have thought of it only in connexion with such a policy as should disable the French Canadians from bringing ruin upon both provinces; and they have taken it for granted that care would be taken to ensure this by the details of any act that should be passed.

Objections to the proposed arbitration.

Now, how is it proposed to establish this security? Not by the act of the supreme executive government, emanating from an authority which all must respect: not by the deliberate exercise of a power still higher, namely, that of the Imperial Parliament; but by the determination of five individuals invested with the authority of arbitrators.

The two arbitrators who are to act on the part of Lower Canada are to be appointed by the special council now existing in that province; that council, it need hardly be said, has not been so constituted that it can be supposed to represent the desires, feelings, or opinions of the 450,000 French Canadians. It would have been absurd and improper if under the circumstances it had been so composed.

The two arbitrators named by them, therefore, can never be regarded by the French Canadians as *their* delegates.

Then, as to the other two to be appointed by Upper Canada, it will be understood, and it will be naturally expected of *them*, that they will endeavour to obtain for their portion of the territory as large a representation as they possibly can.

It will seem manifest, therefore, to the French Canadians that, under the appearance of an equitable adjustment of opposing pretensions, through the intervention of arbitrators, a commission has been constituted, of which the one half must be expected to urge the case against them as strongly as they can, while the other half, who, upon the ordinary principles of arbitration would be persons selected to oppose these, would be certain to be persons having the same views, opinions, and feelings, and even more intent (as they might naturally apprehend) upon arriving at the same result. Under such circumstances they would not look upon the choice of the umpire as a matter of much consequence, so far as they were concerned; for they would expect him to be, without doubt, a person of the same description and opinions. The suspicious and jealous feelings of the great mass of French Canadians would be powerfully excited and called into active exercise from the moment of the arbitrators being appointed, and during the whole course of their proceeding. And if the determination of the arbitrators should be unfavourable to the claim which they would found upon their numerical proportion, far from being reconciled to the arrangement because it came in the shape of an award, they would regard it with aggravated feelings, as the result of an unequal and unfair contrivance; and they would inveigh against it as the partial decision of hostile or corrupt judges.

And it is to be considered that this discontent would be accumulating during the whole period of suspense from the passing of the act till the year 1842, when the new constitution would begin to come into action. How the new constitution could begin its working under less auspicious circumstances it

is difficult to conceive: for, assuredly, it would not fail to be urged that the arbitrators could have no authority to act upon other principles than such as were admitted to have place in the decisions of legal or equitable tribunals;—that they were not at liberty to draw distinctions between different classes of British subjects, postponing one portion to another upon their ideas of political necessity or of comparative merit. It would be contended that, not only does the statute give them no such power, but that its provisions afford express indications of a contrary spirit, by directing that the arbitrators should make the number of electoral divisions in each province as nearly equal as possible. And as the award of the arbitrators would, by the 65th clause, appear to be subject to the confirmation of her Majesty and the Privy Council, a strong appeal would probably be made against their decision, as having been formed upon principles which it was beyond the scope of their authority to entertain. The responsibility as to this part of the measure would thus be thrown at last upon the Government; and, if the arrangement that had been made should be approved of, it would be found, on several accounts, more difficult to sustain it as the decree of a tribunal partaking of a judicial character, than to establish it in the first instance as a political arrangement made by the supreme authority of Parliament.

With regard to the restrictions which the act imposes upon the arbitrators, in addition to what has been already said upon them, I shall only remark shortly:—

Restrictions upon the arbitrators.

1st.—That the direction contained in the 5th clause, namely, that the number of electoral divisions shall be as nearly as possible equal in the two provinces, seems not easy to be vindicated upon any ground. It enforces a principle which, if it should be carried through, would not lead to a satisfactory result; and if the arbitrators should deviate from it, though not very considerably, and for the best reasons, a question might at once be raised whether their award must not be treated as wholly invalid on account of its being repugnant to the statute from which their authority had been derived. For nothing

can be clearer than that it would be in the power of the arbitrators to equalise the numbers (within one at least), if they were inclined to do it, and the statute would, therefore, bind them to that course.

The second limitation of the arbitrators' discretion contained in the 7th clause, if I understand it correctly, could not affect the proportions as between the two provinces, but merely has respect to the just distribution within Upper Canada of her share in the representation.

The *third* limitation, namely, that provided by the 65th clause, that the determination of the arbitrators is to have no force unless it receives the approbation of her Majesty and the Privy Council, would be found, I think, to lead to several inconveniences.

It might occasion considerable delay at a critical moment, and under embarrassing circumstances. It is most probable that any arrangement of the arbitrators which would satisfy one party in the provinces would be far from satisfactory to the other, and it would be claimed, as a reasonable consequence of this provision, that the dissatisfied party should be admitted to impeach the award before the Privy Council, and should for that purpose be heard by counsel.

However equitable this may be, it would be found to lead to very undesirable results. It is for the State, as I conceive, acting openly and avowedly upon just political considerations, to deal with the present condition of Canada; and it may be assumed that it would not be found easy to sustain, before a tribunal acting ordinarily in conformity to established principles of law or equity, such an arrangement of the representation of the provinces of Canada as those persons unquestionably expect who are pressing, too rashly I fear, the measure of the union.

Then, again, according to this bill, the Privy Council could not give their sanction to the award of the arbitrators until thirty days after it had been laid before both Houses of Parliament. Besides the increased risk of delay which this would

occasion, it is to be considered that, although the Government might approve of the arrangement, yet, if either House of Parliament should object, there would be difficulty in confirming it. If both Houses should object, it would seem hardly possible to allow it. If one should expressly approve, and the other disapprove, the case would be perplexing. And, although, as this bill is framed, the Government might confirm the act of the arbitrators, against the opinion of either, or even of both Houses of Parliament, yet it must be admitted that in such a case the new constitution would begin its operation under very unfavourable circumstances.

Wherever it is made mandatory by statute to lay any colonial act or proceeding before both Houses of Parliament, before it can be confirmed by the Crown, it would seem to be reasonable that the opinion of both, and perhaps of either House of Parliament, formally expressed upon it, should be attended with some definite result.

The statute 31 Geo. III., c. 31, it will be remembered, provides in a similar case (sec. 43) that colonial acts of a certain description shall not be assented to until "thirty days after the same shall have been laid before the two Houses of Parliament, and that it shall not be lawful for his Majesty to signify his assent to any such act or acts, in case either House of Parliament shall within the said thirty days address his Majesty to withhold his assent from such Act."

I think it will, upon mature consideration, appear prudent, as well as proper, that, wherever the principle of this provision is adopted, it should be adopted in full, and not partially, as it is proposed to do in this bill.

Another consequence of rendering the award invalid, unless it be approved by her Majesty in Council, is, that the arbitrators would probably Consider themselves in a manner disabled by the existence of such a provision from exercising that kind of discretion which I have no doubt the friends of this bill would expect them to exercise. If their determination is inevitably to undergo the revision of the Privy Council, they would

have constantly in their mind the necessity of being able to show such a foundation for their measure as might be supported on some principle of calculation. They would hardly venture to assume as the grounds of their proceedings considerations of state policy which must be open to endless discussion, and which could not be shown to point to anything definite in detail.

It remains to be noted, as a further objection to the course proposed, that, if the Privy Council should deem it right to reject the arrangement agreed upon by the arbitrators, there appears to be no possibility, under this bill, of proceeding further.

The arbitrators could not, I apprehend, resume the consideration of the subject, with a view to modify their award so as to meet the views of the Privy Council. Their power over the matter, it will be said, has ceased from the time of making up their decision; and the bill makes no provision, I think, for a second reference.

Clause 6th.—Granting, for the moment, that this institution of elective district councils for the purposes mentioned is an expedient measure, it seems imprudent to blend it, as the bill does, with the larger and more important measure of the organization of the province, with a view to representation in the Assembly. Reasons might apply in the one case to influence the division of territory, which would not apply in the other.

Clause 8th.—This clause would throw open to legislation in the colony the whole matter of the number of representatives in the Assembly, and the manner in which the representation should be distributed throughout the province; with this precaution, however, that any bill which the Legislature might pass must lie for thirty days before both Houses of Parliament before it could be assented to; but omitting, as in Clause 5th, to declare what shall be the effect of either or both Houses of Parliament addressing her Majesty against the measure.

It would be more satisfactory, I think, to all who desire to see things placed on a firm and secure basis in the colony,

and who wish for the return of tranquillity, if the arrangements in this respect, which it is evident would form the foundation of the whole measure, could be now finally made; or at least so far finally, that no legislation on the subject could originate in the colony. There would otherwise be little prospect, I think, of peace or security.

Clause 9th.—The expression in this clause, "*or by any other Act of Parliament,*" will not, according to the common understanding of the words, extend to colonial statutes, but there are very many of these which require certain acts to be done by the "Governor of either province respectively, by and with the advice of his Executive Council," and for the future performance of which acts it would be equally necessary that this bill should provide.

Legislative Council.

Clauses 11, 12, 13, 14 relate to the constitution of the Legislative Council, which it is proposed by this bill to construct upon principles in several respects new. The expediency of these changes, which form one of the principal features of the bill, have been considered in another part of this paper; and I will only remark here, that the provision in the 14th clause, "or shall compound with his creditors," would require, I think, some consideration. Other circumstances, besides inability to pay, and in the absence of any fraudulent intention, might lead to a composition of this kind; and at any rate a debtor paying what his creditors voluntarily agree to receive stands in a fairer situation as to character than a person convicted of fraud, perjury, conspiracy, and various other misdemeanors which would not, under this bill, vacate the seat. In this case, as in others, there may be many reasons for not appointing in the first instance, which it would be harsh to urge as grounds of forfeiture.

Clause 15th.—In Upper Canada, at present, a greater number is now necessary, by a regulation of the Legislative Council, to form a quorum capable of acting, namely,—six, besides the Speaker. I apprehend that Parliament might well leave the quorum to stand as *low* as the Council might themselves

choose to place it, and that they need not, in that respect, interfere; for it would obviously be the inclination of any such body to keep such rules in force as would secure to all (so far as it can reasonably be done) an opportunity of bearing their share in the deliberations and proceedings of the House, and to prevent absent members from being taken by surprise. It is on the other side, which this clause would leave unguarded, that the danger lies, namely, the danger that the House might, by their rule, make the quorum unnecessarily large—the consequence of which would be that it would always be in the power of a part, and sometimes of a small proportion, of the members vexatiously to obstruct proceedings, by absenting themselves when matters do not go as they wish.

In Upper Canada this expedient was, at an early day, resorted to by the Assembly, and in Lower Canada more than once. The part of this bill which relates to the Assembly seems to have been framed with a recollection of this circumstance; and if Parliament should make any regulation respecting the quorum in the Council, which seems scarcely necessary, it should be for the purpose of preventing a possible evil, such as I have stated, and not in order to *keep up the quorum,* about which there is no danger.

Clause 16*th.*—I do not see why the term "*President*" should be substituted for "*Speaker.*" The latter is the correct English designation for this officer in the upper branch of the Legislature, as well as in the other. It was adopted by Parliament in the statute 31 Geo. III., c. 31 (12th clause), and has been always used in Canada: I see no advantage in the change. It certainly cannot be an advantage to destroy unnecessarily any point of resemblance, even in form or name, between the representative constitution in the colonies and in the mother country.

Clause 17*th.*—The same remark applies to the provision in this clause. In the House of Lords in England, the Speaker, being a member, votes with other members upon every ques-

tion. It is proposed by this bill that he should have no vote, except where the other votes shall be equally divided.

In England the Speaker of the House of Lords has no casting vote in addition to his other vote; and, therefore, although there are many cases where such double vote has been conferred on a presiding officer (as in the East India Company's Charter, for instance), it may be thought more reasonable and just to perfect the resemblance with the constitution of the mother country, by allowing no double vote to the Speaker of the Legislative Council.

In Lower Canada, I believe, such double vote has been given in two or three instances in the Legislative Council, upon the ground that the 31 Geo. III. conferred the right. In Upper Canada the right has been asserted, and perhaps exercised, but not, so far as I know, within the last fifteen or twenty years.

Clause 18*th.*—Instead of every assembly thereof *other than* the first (near the end of the clause), the words should be "every assembly after the first," &c.

Power of the Legislature.

Clause 19*th* gives, by implication, to the proposed legislature authority to pass acts limiting the power of the governor to prorogue or dissolve the Assembly; but these are material points in the constitution, which should, as I conceive, be only subject to regulation by Parliament. In another respect, also, the clause would require to be reconsidered. It enacts that the laws now in force in Upper Canada, respecting the qualification of members to be elected to the Assembly, shall be applied with respect to the new Assembly until other provision shall be made by law. But, as there are no assessment-rolls in Lower Canada, and no registry-laws, unless some ordinance for that purpose has been very recently passed, I apprehend it will be found, on looking into the matter, that this provision could not be conveniently carried into effect as applied to elections in what now forms the province of Lower Canada.

Clause 20*th.*—This seems to be liable, in two or three im-

portant particulars, to the same objection of vesting, at least by implication, in the Colonial Legislature, a right to legislate on points which ought, for the common good, to be finally and firmly established, or, at all events, to be subject only to regulation by Parliament. This clause seems to contemplate but *one* division into districts; namely, that proposed by this bill. Upon this I have remarked already.

I see no provision here, or in any other part of the bill, for trying contested elections in the first session of the Legislature; but it appears to me that something on this head would be proper for obvious reasons, under existing circumstances, although the 31 Geo. III. contained no such provision.

There seems also to be an omission of any provision for the executing writs of election for the four towns which are excepted out of the five districts, and could not therefore come within any of the electoral divisions.

There is an obscurity, I think, in the last sentence of this clause; I do not clearly gather its meaning. As there would be two members to be chosen for each division, each voter, I suppose, would be allowed to vote for two persons, as is usual in such cases. I do not see what is meant to be guarded against by the proviso, for it cannot have been apprehended that a person might claim to give as many votes as he had qualifications, according to the principle in some joint-stock corporations. If it should so happen that a part of each province should be embraced in the same electoral division, one of the enactments in this clause would be found embarrassing.

Clause 21*st*.—This would, I see, expressly enable the Colonial Legislature to pass laws limiting the prerogative of the Crown in regard to the time and place of holding sessions of the Legislature, and respecting the proroguing and dissolving it; and also respecting the duration of the Legislature. It would be a very material change in the constitution of these colonies, and, I think, an imprudent one, for reasons which I have given in another part of this paper.

Clause 22*nd*.—This clause proposes to place the election of the Speaker of the Assembly exclusively within the power of that body, so that they may proceed in it without direction from the Governor, and that their choice shall not require to be confirmed by him.

It is very true that the practice in this respect, both in the colonies and in the mother country, has become matter of form rather than of substance. The 31 Geo. III., c. 31, is silent in respect to the election of Speaker of the Assembly. It was left to be, as it has been, deduced from the analogy with the House of Commons.

Clause 23*rd* is more properly conceived, I think, than the 15th clause, which relates to the same matter in the other branch of the Legislature. The Assembly, as this clause is framed, could not increase their quorum beyond the number mentioned. As it does not appear why the act should proceed on different principles in this respect, with regard to the two branches, it would have been better that the other clause had been framed in the same manner as this, except that the language should be so explicit as to leave no room for doubt whether either House might, or might not, *reduce* their quorum by rule—a point which, under the words of this clause, might seem doubtful.

Clause 30*th* is of very questionable expediency, I think, to say the least of it. Many of the most necessary and important laws apply to parts, and not the whole, of a country; and such statutes may often become necessary for remedying some abuse which the local authorities or the population of a particular district have occasioned or encouraged. The elective district council might partake of this local feeling, or might not have sufficient independence to withstand it, and this clause would enable them to set themselves in opposition to the Provincial Legislature, and to thwart their measures, by compelling the delay consequent upon a reference to England, when there might be really no just pretence for it. This delay might ex-

Elective District Council.

tend to a year, or nearly so; and might, under some circumstances, be a great public evil, occasioning even the entire failure of the object of the measure.

The more I consider this clause, the more I am convinced that it would never answer to adopt it. It has neither principle nor precedent to support it. It would give to these district councils a control over the Provincial Legislature which could not fail to produce constant collisions and discontent as well as inconvenience. If the principle be a sound one, why should not a remonstrance from the majority of the inhabitants of any district or county have the effect of disabling the governors of these, or any other colonies, under their present constitutions, from assenting to bills passed by the Legislature? And, why should not Parliament in England be under a similar restraint in regard to local measures?

The practical operation of this clause would show it to be most inconvenient: if, for instance, a bill were to be passed, granting a hundred pounds to build a school-house in any district, or a sum of money for building or repairing a court-house, or imposing a toll on a bridge, or correcting an error in a survey, such bill could not be assented to with the rest, but must be reserved by the Governor for twenty-one days. The act omits to state by what formality he is to assent to it afterwards, in case he should receive no remonstrance from the district council. But if the district council should request the Governor to reserve the bill, then it *must* be reserved for her Majesty's consideration, and it could not be assented to until thirty days after it had been laid before both Houses of Parliament.

What probability there is that Parliament would, within the thirty days, apply their grave consideration to bills of this description need scarcely be stated; and if they should indeed bring themselves to discuss the question whether the school-house should be built, or the court-house repaired, or the erroneous survey corrected, I know not how they could enable themselves to judge whether they ought to prefer the opinion

of the district council, or that of the Provincial Legislature. To assume that the less considerable body should, *prima facie*, be regarded as entitled to more weight, because they belonged exclusively to the district concerned, would not be always a safe principle, and certainly not consistent with the theory of the British constitution.

It might happen, and probably it would in some cases, that a bill passed almost unanimously by the Provincial Legislature, would be arrested in its progress by an address of the district council opposing the imposition of a tax, although, according to the English parliamentary rule, a petition against a tax ought not to be received at all.

It would be inconsistent with all experience to conclude that it would only be in extraordinary cases that the district councils would be likely to interpose, and that the delay therefore occasioned by this clause of the bill would not extend, in general, beyond the twenty-one days. Every one knows how keenly, and how unreasonably often local matters are contested, and that many questions, in themselves insignificant, are rendered of importance by the bearing they may be made to have upon elections and party movements. From this and other causes, it would happen that few matters of local application would come before the Legislature which would not also be made the subject of discussion in the district council.

I could give some instances from past occurrences, in which the effect of such a provision (if it had existed) would have been evidently most injurious to the public interests, by preventing the possibility of applying a prompt remedy where it was much required.

It is a further objection to this 30th clause, that it is not declared in it what shall be the effect of either or both Houses of Parliament disapproving of any bill that may be laid before them in compliance with the provision.

And it is well worthy of remark, that if this clause should pass in its present shape, the salutary check upon provincial legislation which has hitherto existed under the wise and

well-considered statute, 31 Geo. III., chap. 31, would in some very important cases be withdrawn, and the Legislature would be at liberty to pass acts respecting them which would become laws without the necessity of referring them to the British Government, or Parliament. I think the footing on which these matters have hitherto rested is much better, both as regards the provinces and the mother country.

Elective district councils.

Clauses 31 to 50 relate to the novel institution of district councils. The expediency, or inexpediency of adopting this part of the proposed measure has been discussed already. I will only make a few remarks here upon their details.

31*st Clause.*—One would suppose from this clause that it must be meant to supersede the present division of the two provinces into districts, or it would have appeared proper to qualify the language thus: "that in every district of the said United Province to be formed under the provisions of this Act there shall be," &c.

35*th Clause.*—I apprehend that there would be found some perplexity in applying this cause.

37*th Clause.*—Perhaps I do not clearly understand this; but it seems to me that it might not be always easy to decide which nine persons had been for the longest time members without re-election. If after the first two years all the nine not drawn should be living, then *they* would be the oldest members; but as they might not all be living, the question of seniority might come to be applied to some persons whose elections were contemporaneous.

39*th Clause.*—It seems to be intended that returning officers for elections to the assembly shall also be returning officers for the purpose of these clauses; but it is not expressly said that they shall be; and as the returning officers for electoral divisions are to be appointed *pro hac vice*, for each election (as I understand the bill), they will perhaps be held to be no longer returning officers when they have fulfilled their first duty.

44*th* and 45*th Clauses.*—It will be seen from these clauses that it is not proposed to limit the district councils, either in

respect to the amount of taxes which they may impose, or the magnitude of the public works which they may undertake. And it is to be remembered that it is not to corporations acting only within the limits of certain towns that these extensive powers are to be given, but that all the agricultural districts, and, in fact, the whole of Canada, is to be subject to this species of legislation. It is to be considered, also, that in a new country like Canada, the objects enumerated in these clauses are precisely those to which the attention of the Legislature is principally devoted.

It does not seem to be intended that the Legislature of the province should cease to occupy itself with such matters, but rather that the province with respect to these objects shall have two legislative authorities in action, either of which shall be competent to make rail-roads, canals, and highways, at their discretion, as to locality, extent, &c., and shall have power without limit to raise whatever taxes they may think necessary for such objects.

How far this scheme might be acceptable in Lower Canada I will not take upon me to say, though I believe it would be but little favoured; but in Upper Canada, where, besides their Legislature, there is in each district a system of internal assessment limited in amount, and for certain specified purposes, as in English counties; in Upper Canada I think I may confidently repeat that this triple machinery for taxation is not required, has never been thought of as desirable, and would be looked upon with disapprobation very generally, if not universally.

46*th Clause.*—I must repeat here, that I am not certain, whether this clause has or has not been framed with a knowledge that there are already in Upper Canada "*districts*" and "*treasurers of districts,*" and whether it is intended that these shall co-exist with the proposed new organization. If this should be intended, then it would be necessary that some care should be taken to prevent the double arrangement from clashing. But if, on the other hand, it be intended

that there shall be no other districts than those which would be created under this act, then I must again state that in Upper Canada, at least, such new division into two or three districts only could never answer as a substitute for the present arrangement.

48*th Clause.*—I apprehend no lieutenant-governor of much colonial experience would desire to act under such a system as this clause would establish. His difficulties with one legislature are enough generally to occupy his attention, and this act would give him the superintendence of five more, between which five and the General Legislautre it is most probable there would frequently arise collisions of no very agreeable nature, from the desire of the one to encroach and of the other to restrict, and from the fact of their both having an unlimited power over the same subjects, those subjects, too, being precisely such as interest the population most powerfully.

Under the proviso at the end of this clause, it might be conceived by the Provincial Legislature, that they could withdraw from the jurisdiction of the elective councils any or all of the subjects which this bill would commit to them. As, for instance, if, being jealous of their interference in matters of such consequence to the country as the construction of canals, they should provide by law that no act should be passed for any such purpose except by the Provincial Legislature, then any ordinance which the elective councils might afterwards pass for making a canal would be repugnant to such enactment, in other words, it would impede the full operation of the provincial statute, and would therefore seem to come within the prohibition of this clause. I do not mean to say that this would be the effect of the clause, but I have no doubt that would be contended.

It would not be objectionable, I think, that the Provincial Legislature should have it in their power to circumscribe in this way the sphere of action of the Council, but I do not suppose that this was intended to be the effect of the proviso. It

is meant, I believe, only to prevent the Council from impeding the general course of legislation, by the Provincial Parliament, not to enable the latter by anticipation to tie up the hands of the former in respect to any or all of the matters which they could otherwise deal with. It seems to me, on a perusal of the several clauses, that it is intended by the bill to enable the Provincial Legislature to increase the powers of legislation given to the district councils, if they should think fit to do so, but not to abridge them.

49*th Clause.*—There is no provision for determining the legality of any election to the district council in case of its being contested.

It has been thought, probably, that it might be left to the district councils to regulate that matter themselves, and so it might be, after the first session; but in respect to the first, perhaps, some provision might be expedient.

Elective district councils.

51*st Clause.*—This clause seems to afford evidence of an intention that the present districts should be superseded by the new division of the provinces into five districts, because it subjects to the disposition of the district councils the funds that may continue to be raised for local purposes, under acts heretofore passed in either province. In Upper Canada, therefore, the district assessments which are limited by law to various local objects, and are applicable by the Legislature, would be placed within the disposition of the district councils.

Whoever framed this bill had little idea of the confusion and dissatisfaction which would be created in Upper Canada by the attempt to introduce such a system. To say nothing of other objections, the people of that province would readily perceive that as each of the districts must cover a territory of two hundred miles in length, or more, the members of the elective councils would not be, like the present magistrates in session, chiefly gentlemen who, having attended for a few hours in the day to public duties, could return to their homes at night; and so may afford, as they do, to serve gratuitously. This new body of gentlemen, in whom it seems intended to vest the con-

trol of all local funds, would rather resemble in this respect the members of the Provincial Assembly, and the consequence would be found to be that if they were to receive no wages, many of them being distant from the place of meeting would yield a very indifferent attendance; or if (which is more probable) they should assign to themselves, by an ordinance, a certain sum per diem for their attendance, then no small proportion of what now goes to repair roads and bridges, feed prisoners, and pay other district charges, would pass, and not unjustly, into the pockets of the members.

Clause 52.—Upper Canada, which owes about a million, will not object to this provision, I dare say, nor will her creditors. She would soon find, however, if the projected union should take place, that she had paid a high price for the supposed advantage. Lower Canada has not a revenue that exceeds her expenditure, as I understand, neither is she wholly free from debt; so that the only benefit in point of revenue which Upper Canada could derive from the union would be contingent upon the willingness of a majority in the new House of Assembly to add to the duties upon imports at Quebec. Finance.

The power of imposing additional duties is what, in fact, is wanting to the prosperity of Upper Canada; and that power could be given by measures of another description, reasonable and just in their nature, without deranging the civil constitution of Upper Canada, and without making her peace and security depend on the future conduct of the French Canadians.

Clause 53.—This clause proceeds upon the assumption that there is, or will be at the time of the bill passing, a civil-list established in both provinces, so far at least as those offices are concerned which are enumerated in it; but I am not aware that there is such a provision "*secured or payable by law*" in Lower Canada; and in respect to Upper Canada, there is by no means an annual charge payable by law sufficient to provide for those objects. The greater part of the emoluments and contingencies of the "attorney and solicitor- Civil-List.

general, the provincial secretary and civil secretary," is left to be voted by the Assembly in each year, and is not fixed at any annual amount by law, but is altogether uncertain.

Besides, there are several indispensable public officers who are not enumerated in this clause: for instance, the clerk of the council, inspector-general of public accounts, receiver-general, surveyor-general, and commissioner of crown lands, adjutant-general of militia, &c. For some of these officers the law does now make a competent and permanent provision in Upper Canada.

It can hardly be intended, I suppose, to throw open again this part of the civil-list; and yet, as none of those officers are enumerated in this clause, that may be taken to be the construction and effect of the act. For these charges are no part of the public debt contemplated by the 53rd clause, or at least the United Legislature might not admit that to be the fair construction, and they certainly would not come under any other head of charge upon the public revenue specified in the clauses which follow. Whatever may be the intention, therefore, as the 57th clause places all the surplus revenue beyond those charges at the disposal of the Legislature, it might possibly be contended that that clause must have the effect of virtually repealing all provisions for the civil-list which are not saved by the 53rd clause.

I think that was not intended, but the intention ought to be made plain; for it may be urged that if all permanent provisions, made by law in either province for the civil offices, were meant to be respected by this bill, there would have been no necessity for enumerating such of them as are enumerated, viz., the lieutenant-governor, the judges, &c.; and the maxim would probably be cited—" Expressio unius exclusio est alterius."

It seems to be a remarkable thing in this clause that it makes no allowance for the total change of circumstances in the civil government which this bill would create. It supposes the continuance of two governors, and two sets of officers, and civil

departments: but the bill says nothing of this; and in fact the Secretary of State could not apportion the money, as directed by this clause, "to the aforesaid public officers and their several departments," because, according to the other provisions of this bill, there would be but one province to govern, and of course but one set of public officers.

Clause 57th.—This clause, I think, should contain the words "and subject also to the charge specified in the 52nd clause of this Act;" for the "*several payments*" alluded to in the beginning of this clause extend only to the *annual interest* of the public debt. It is true that the legislature of Upper Canada has proceeded hitherto in the spirit of this clause, without apparently making much allowance in their calculations for the *principal* of the debt; but it would be better, in appearance at least, that this bill should not treat all the balance beyond the civil list, and annual interest, as being clearly disposable by the legislature for other objects, without regard to the principal debt due.

I do not see why parliament should descend so much into the detail of legislative proceedings as it is proposed to do in this clause, by stipulating that all bills for appropriating revenue or imposing taxes shall originate in the Assembly. The statute 31 Geo. III. ch. 31, an ably-drawn and well-considered statute, contains no such provision; and yet in both provinces, by common consent, the legislatures have abided by what they found to be parliamentary usage in that respect, governing themselves by that analogy which they are obliged to resort to for direction in innumerable other points. In fact each branch may be safely trusted with the vindication of its own privileges; and there is so little chance of the Assembly passing a bill originating in the council for levying a tax, or granting a sum of money, that the council might, without danger, be left to make the experiment.

It might be well, indeed, if all the privileges of either house in regard to the other, as well as in regard to the Queen's subjects generally, could be set down and defined in their written con-

stitution; but that, perhaps, would not be found practicable; and since no attempt is made to do it, it seems unnecessary to single out a privilege which long usage has established on a firmer footing perhaps than any other.

Proposed restriction upon grants of money by the Legislature.

The last proviso in this clause, namely, that which enacts that the Assembly shall originate no vote for the appropriation of money *to any purpose* which shall not have been first recommended by a message of the governor, would be a very unpalatable restriction, so far as Upper Canada is concerned; and it does not appear to me that it would be found practicable to enforce it for the purpose which, I imagine, has led to its introduction. When I say this, I assume that the idea of proposing it is taken from Lord Durham's Report, and under the expectation that it would answer the purpose for which his lordship seems to have recommended it.

In order to give it this effect, it must be applied in Canada really, and effectively, in a class of cases where the application of such a rule in England is, as I conceive, nominal only, and really insignificant.

I am aware that in England a rule of parliamentary proceeding exists, such as this clause contemplates. In Upper Canada the Assembly have not been required to limit themselves, and have never in fact limited themselves by any such rule. They have, in that respect, departed from the English practice, and I dare say unwisely; for it must be admitted that, without the salutary restriction of such a rule, abuses are very likely to arise (and they may have arisen in Upper Canada) with regard to claims of individuals for alleged public services, or gratuities upon grounds which the Government might justly refuse to acknowledge, but which importunities addressed to individuals may sometimes improperly succeed in establishing.

The disregard of the parliamentary rule in these instances has the effect of transferring to a popular assembly the just and acknowledged prerogative of the crown; and the consequences are both prejudicial to the honour of the Government, and destructive of that control which it ought to possess

over its servants; while, at the same time, they are otherwise injurious to the public interests, and very undesirable as respects the members of the Assembly themselves. For they would find it more expedient to be able to throw the responsibility where it fairly rests, by saying to the applicant "You must get the Government, in the first place, to recognise your claim upon the public service, and then we can deal with it in the Assembly as we shall think right."

If, therefore, the rule which is acted upon in England could be introduced into the Canadian legislature, it would be an advantage in such cases as I have just referred to. But this is not by any means the application of the rule which Lord Durham seems to have contemplated. His lordship had been told, it appears, that in projecting and carrying on public works in Canada there had been great recklessness, prodigality, and corrupt jobbing. Taking it for granted that the charge was true, but without offering, and I think I may venture to add without having received, any proof of it, his Lordship strongly recommends the rule or restriction alluded to, intending, as I infer from the Report, that the Assembly should not have power to enter upon the construction of any such works as canals, roads, harbours, &c., without the previous recommendation of the Lieutenant-Governor, conveyed by message.

But to make this a real and effectual check, in regard to the progress of public improvements, I believe the Lieutenant-Governor would find it necessary to take such ground as the Crown does not assume, and never would assume in this country, and such as would leave no possibility of continued harmony between the Executive Government and the Assembly.

It may be very true that in the House of Commons, when it is proposed to construct a canal, or a breakwater, or to advance any other object of great public utility, it is usual for some minister of the crown to go through the form of saying in his place that Her Majesty has no objection to the House entering upon the consideration of the question.

But I imagine, in cases of this description, this announcement means little more than is meant by Her Majesty's formal approval of the election of speaker after the house has chosen him. It would be difficult, I apprehend, to find a case in which the minister of the crown has disabled the House of Commons from carrying into effect their wish of advancing any public improvement by setting the opinion of the executive government upon the expediency of the undertaking in opposition to that of parliament, or because they had come beforehand to the conclusion that the money, if voted, would be unwisely or dishonestly expended.

The difference of circumstances in the two countries creates a substantial difference in regard to the operation of such a rule. In England certain officers of the Government are of necessity members of the House of Commons; and they cannot be there long in their capacity of ministers, unless they have a majority in that house. They take the lead in conducting the public business, and unless they agree to adopt and propose any measure of the description alluded to, it has small chance of being carried. This necessary connexion of the ministers of the crown with the business of the House of Commons brings things in effect to the same point that the actual enforcing of the rule would do: so that the occasion for applying it as a restriction upon the house does not present itself; and under such circumstances the rule is little more than a mere form.

But in the provinces of Canada there have been no boroughs under the influence of individuals; and there is never any certainty there that any of the principal officers of the Government will be members of the Assembly. The consequence is that the business of the house is not conducted by any one as representing the Government.

Measures of public utility are taken up by any of the members indifferently; and if a member, moving for public aid to a work in which the inhabitants took a warm interest, and knowing that a majority of the Assembly were willing and desirous to make the grant, were to be disabled from even bringing the

subject under discussion, because the Lieutenant-Governor would send down no message recommending it, it would at once be felt that a direct control was exercised by the Crown over the deliberations and acts of the Legislature in a manner that could not, and does not occur in England.

59*th Clause.*—If a necessity were to arise for the appointment of an umpire by the Crown, he ought not to be an inhabitant of either province. Umpire.

60*th Clause.*—I doubt the propriety of the provision contained in this clause.

61*st Clause.*—This clause seems to require that the legislature of each province should be continually in session, and ready to supply any vacancy that may occur among the arbitrators. If the legislature were not in session, a month would be rather too short a period as regards Upper Canada.

64*th Clause.*—It is not anywhere said what number of arbitrators must be present when any question is to be decided. The absence of one or two from illness, or other cause, might occasion the board to be unfitly constituted for the peculiar duties which they would have to perform.

66*th Clause.*—If the day next succeeding Christmas-day should happen to be Sunday, a doubt might arise upon this clause, though the meaning is plain.

68*th Clause.*—It probably was not intended that the legislature, to be constituted under this act, should be disabled from legislating respecting the rights and privileges of religious bodies in cases where no such restriction exists at present under the statute 31 Geo. III. But this clause would so disable them, as I apprehend, in some cases which would not be em-

braced within the next succeeding clause; and it might possibly disable them in cases where the religious body concerned might desire the interposition of the legislature.

72nd Clause.—I am not sure that I understand the necessity for this clause, or the object of it. The bill has not required anything to be done by the "Governor of the United Province" before the provinces shall be united; and if they should be united, there must of course be, from the time of their union, a governor of the United Province, as it is called in this bill, and there could no longer be a governor-general of the two provinces.

Apparent omissions.

Having made these remarks upon the different clauses, I will next notice some points which the bill, as it seems to me, omits to provide for, or at least omits to make such distinct and adequate provision for them as the nature and importance of the subjects demand. I do not, for instance, see anywhere a distinct enactment respecting the calling the first assembly to be elected under the new constitution.

Legislative Councils.

In respect to the members of the legislative council, the qualifications required by the statute 31 Geo. III., ch. 31, are not proposed to be exacted; not because it has been determined to dispense with them, but because it is presumed that they will be implied from, or involved in, the new qualifications which this bill requires: but that is not certain, and the qualifications referred to are such as should not be left to chance, or to be inferred from construction.

Again, there is no provision in this bill respecting the vacating of seats in the legislative council by continued residence out of the province, or by taking the oath of allegiance to a foreign government. And there is no provision for determining any questions that might arise respecting the forfeiture of a seat in the council, or respecting the right to sit there. Upon these points the statute 31 Geo. III. contains express enactments. The power given to the Crown by the last-mentioned

statute of creating in the provinces hereditary titles to sit in the legislative councils would not be continued under the proposed act. That is, no doubt, an intentional omission, and it is one upon the expediency or inexpediency of which there may be different opinions.

The courts of appeal seem to me to have been lost sight of by the framers of this bill. There can be no direct appeal to England from the Court of Queen's Bench in either colony, as the law now stands. It is necessary to appeal first to the Court of Appeal which has been constituted in each colony respectively; and in Upper Canada this court has been created by a provincial statute, and is made to consist of "the governor or the chief justice, and any two or more members of the executive council." Courts of appeal.

The ninth clause of the present bill, I apprehend, was not framed with a view to meet this enactment; and it would not, in fact, have the effect of substituting the governor and council of the united province for the existing court of appeal in Upper Canada, which would be abolished by this act, or at least it would do so not otherwise than by a very doubtful construction, nor would the provision be by any means a convenient one.

These, however, though not unimportant, are not the most important matters. I do not see that the bill provides in any manner, clearly and distinctly, for the great change of circumstances which such an act would create, both in respect to the executive departments of the government and the administration of justice. The 70th clause does, indeed, provide that the laws which shall be in force in either of the provinces on the 1st of January, 1842, shall remain in force in each of the provinces respectively after their union, unless and until they shall be altered by the new legislature. By this, I suppose, is meant, that they shall continue to be in force within that portion of the newly-constituted province to which they extended before the union; for, after the union, there will no longer be two provinces in existence; the two are to be made one province, according to the express words of the 2nd clause, and

the preamble of the bill is to the same effect. It is not correct, therefore, to speak of the two provinces as having a separate existence after the passing of such an act. There is no difficulty, however, in understanding what is meant. But this clause, simply enacting that the *laws* shall continue in force, comes very short, as it appears to me, of meeting the great changes which the union would produce. From the 1st of January, 1842, there would be but one province, and, consequently, there could be but one executive government, that is, but one series, if I may so call it, of civil departments; one executive council, for instance, one treasury, one surveyor-general, one inspector-general, one secretary, one attorney and solicitor general, and the authority of all of these would necessarily extend over the whole of Canada. But up to the 1st of January, 1842, there would be two provinces, two executive governments, and two series of civil officers. How then is the change to be carried into effect? Which of the civil governments shall stand, and which shall fall; or shall a third be constituted, partly of one and partly of the other, or wholly independent of both? It seems to me that some enactments would be necessary for consolidating the two establishments, and providing, among other things, for the transferring the various records and archives. It may be said that all this would be matter of purely executive arrangement, and that when the province was divided, in 1791, the statute contained no provisions of this nature. But the cases are very different. Then a part merely of the province of Quebec was taken off and placed under a separate government. Lower Canada remained, with all its civil officers and departments exactly as before, with this only difference, that a part of the territory was withdrawn from their jurisdiction and authority. And for Upper Canada an entirely new civil government was to be constructed by the royal authority. Nothing was dropped by the law, and by the same law left unprovided for. Is it intended that, if this bill should become a law, it shall be left wholly in the discretion of the Secretary of State, or of the Governor of

Departments of the Civil Government.

the province after the union, to say to one or to both of the receivers-general, or secretaries, or to the crown-officers, and to the numerous clerks in the public departments who have no other means of subsistence, that their services are no longer required? And is it to be the effect of this statute that, because a new territorial arrangement is thought necessary for political purposes, therefore the commissioned officers of the Crown, in either province, are to be cast off at discretion? Here again it may be said that it must be presumed the Government will do whatever would be just. That they would desire to do so it would seem unreasonable to doubt, but the statute (as this bill stands) would not place it in their power. In the cases of consolidating and abolishing offices in the United Kingdom, which have been frequent of late years, parliament has scrupulously taken care to provide against any such injustice as might otherwise be suffered in consequence of their acts.

The 53rd clause of this bill was not introduced, as I conceive, to meet the inconvenience which I now speak of, and if it could be so applied, it would answer the object but partially, and very imperfectly. That clause seems to contemplate (though I do not know for what purpose) a continued civil establishment for the two provinces after the union, just as before, and with a continuance of their duties, for it speaks of the "contingencies of the several departments."

It appears as if the framers of the bill had sometimes in their minds a legislative union only, and at other times a union for all purposes. The effect, however, of the bill would be to make the provinces *one* to all intents and purposes. As it is framed, there could not be two executive governments. Then, as respects the general convenience of the inhabitants of the two provinces, if this bill were to pass in its present form, the executive government of each province would cease to exist on the 1st of January, 1842; but what would be established in its place, or to what point in Canada the people would have to resort, upon any of those innumerable occasions which bring

them in contact with their Government, they have no means of conjecturing from this bill.

I apprehend it may not have been considered in what a multitude of cases the statutes of the respective provinces require the intervention of the authority of the governor, or of his civil secretary, independently of the executive council, and how great the inconvenience would be, if, after the 1st of January, 1842, the people of Upper Canada must, on these occasions, resort to Lower Canada, or *vice versâ;* and yet such must be the effect of any arrangement that could be made under this bill.

Administration of justice.

The administration of justice is another important branch of the public service which does not appear to be placed by the bill on a distinct and satisfactory footing. It is true that, under the 70th clause, the laws of each province are to continue in force within the same territory respectively after the union as before, until altered by the legislature. But nothing is said of the administration of the laws, and nothing is enacted in respect to the courts. On the 1st of January, 1842, if this bill should pass in its present shape, there would be two Courts of Queen's Bench in the one province of Canada, both having unlimited jurisdiction in matters civil and criminal; or I am not sure that it might not be contended that there would no longer be any such court, inasmuch as each was originally constituted a court of, and for, a certain province, which, after the 1st of January, 1842, would no longer exist as a separate territory. And at any rate, as regards Upper Canada, difficulties might arise in determining *where* such a court could exist, because it is provided by a colonial statute, 2 Wm. IV., c. 8, that it shall be "holden in the city, town, or place which shall be, for the time, *the seat of the civil government for Upper Canada.*" After the 1st of January, 1842, such a province as "Upper Canada" will no longer exist; and the seat of government for "*Canada*" will not be identical in a legal sense, and perhaps not in any sense. To say the least,

the point would not be clear. Upon this point, and upon the omission in the bill of any provision to meet the effect which a new division of the provinces into districts would have upon the civil and criminal administration of justice, I would remark more particularly, if it appeared that there was merely an incompleteness, or inaccuracy in the measure in this respect; but it seems to me that the administration of justice has, by some inadvertence, been but little considered. The provincial legislatures now existing could not do all that would be necessary for preparing the way for such changes, because neither of them could pass an act which would have effect beyond the respective province. The Imperial Parliament, doubtless, could, before the year 1842, pass some supplementary act; but it would be more satisfactory in all respects if anything which they may have to do towards perfecting arrangements of such importance, or, rather, of such absolute necessity, could be done before the existing order of things is abolished: for it need scarcely be said that enactments of the Imperial Parliament, for the regulation of the internal affairs of a colony, are not to be obtained with ease, or certainty.

APPENDIX.

20 *June*, 1839.—3 VICT.

A

BILL

For Re-uniting the Provinces of Upper Canada and Lower Canada, and for the Government of the United Province.

[Note.—The words printed in *italics* are proposed to be inserted in the Committee.]

WHEREAS it is necessary that permanent provision should be made for the future good government of the provinces of Upper Canada and Lower Canada, in such manner as may best secure the rights and liberties, and promote the interests of all classes of her Majesty's subjects within the same: Preamble.

And whereas, for that purpose, it is expedient that the said two provinces of Upper Canada and Lower Canada should be reunited, and should form one province, for the purposes of executive government and legislation, and that provision should also be made for the more effectual advancement and protection of the local interests of the inhabitants in the said province, by a subdivision of the united province into districts, and by the constitution of district councils:

And whereas it is expedient that the district and county of Gaspé and the islands of Madelaine, which now form part of the province of Lower Canada, should be annexed to the province and government of New Brunswick;

1.

Be it therefore enacted, by the QUEEN'S most excellent MAJESTY, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That on and from the day of one thousand eight hundred and so much of an Act passed in the session of parliament held in the thirty-first year of the reign of King George the Third, intituled "An Act to repeal certain parts of an Act passed in the fourth year of his Majesty's reign, intituled 'An Act for making more effectual Repeal from 1 March 1842 of part of 31 Geo. 3, c. 31;

provision for the government of the province of Quebec in North America,' and to make further provision for the government of the said province," as constitutes or provides for the constitution or calling together of a legislative council or legislative assembly in either of the said provinces of Upper Canada and Lower Canada respectively, or as confers any powers or functions upon any such legislative council or legislative assembly, or either of them, or any member thereof respectively, or as confers any powers or functions on the governor or lieutenant-governor or person administering the government of the said provinces and the executive council of the said provinces respectively, or either of them; and also so much of

and of part of 3 Geo. 4, c. 119;

an Act passed in the third year of the reign of his Majesty King George the Fourth, intituled " An Act to regulate the trade of the provinces of Lower Canada and Upper Canada, and for other purposes relating to the said provinces," as relates to the settling of the proportions of duties and drawbacks between the said two provinces and the appointment of arbitrators for that purpose; and also the

and of the whole of 1 & 2 Will. 4, c. 23;

whole of an Act passed in the session of parliament held in the first and second years of the reign of his late Majesty King William the Fourth, intituled " An Act to amend an Act of the fourteenth year of his Majesty King George the Third, for establishing a fund towards defraying the charges of the administration of justice and the support of civil government in the province of Quebec in America;" and also so much of all laws and ordinances of either of the said

and of all provincial laws contrary to the provisions of the Act.

provinces of Upper Canada and Lower Canada as may be contrary to or inconsistent with the provision of this Act, shall and the same are hereby declared to cease and stand repealed; and so much of any Act or Ordinance which may be passed by the legislature of either of the said provinces at any time hereafter, and before the *first day of January* in the year one thousand eight hundred and *forty-two*, as shall be contrary to or inconsistent with the provisions of this Act, shall to that extent be null and void: Provided always, That the repeal of the aforesaid several Acts of Parliament and of the said laws and ordinances respectively shall not be held to revive or give any force or effect to any other Act of Parliament, law, or ordinance, or any part thereof, which shall by them or any of them have been repealed or determined.

2. The district of Gaspé and islands of Madelaine annexed to the province of New Brunswick. 14 Geo. 3, c. 83.

And whereas his late Majesty King George the Third, by his proclamation of the seventh day of October one thousand seven hundred and sixty-three, was pleased to declare that he had put the coast of Labrador, from the River Saint John to Hudson's Straits, with the islands of Anticosti and Madelaine, and all other smaller islands lying on the said coast, under the care and inspection of the governor of Newfoundland: And, whereas by an Act passed in the fourteenth year of his said late Majesty, intituled " An Act for making more effectual provision for the government of the province of Quebec in North America," all such territories, islands, and counties as, since the tenth day of February one thousand seven hundred and sixty-three, had been made part of the government of Newfoundland, were, during his said Majesty's pleasure, annexed to and made

part of the province of Quebec as created by the said proclamation; BE it enacted, That on and from the *first day of January* one thousand eight hundred and *forty-two* the district and county of Gaspé in the province of Lower Canada, and also the said islands of Madelaine, notwithstanding anything in the said recited Act of the fourteenth year of King George the Third contained, shall be annexed to and thenceforth form part of the province and government of New Brunswick.

I. Formation and Division of the United Province.

3. Upper and Lower Canada to form the United Province of Canada from

And be it enacted, That on and from the said *first day of January* one thousand eight hundred and *forty-two* the provinces of Upper and Lower Canada shall form and be one province, and shall be called the "United Province of Canada;" and there shall be one legislature for the said United Province, to be constituted as hereinafter mentioned.

4. The United Province to be divided into five districts.

And be it enacted, That the said United Province, with the exception of the cities of Quebec, Montreal, and Toronto, and the town of Kingston, shall be divided into *five* districts, in each of which shall be a district council, to be constituted as hereinafter mentioned.

5. Districts to be formed and bounded by arbitrators.

And be it enacted, That such *five* districts shall respectively be formed and bounded in such manner as shall be determined by the arbitrators to be appointed as hereinafter mentioned, provided that such districts shall be so formed and bounded as to render the number of electoral divisions hereinafter mentioned in the province of Lower Canada as nearly as may be equal to the number of such electoral divisions in the province of Upper Canada.

6. Nine electoral divisions to be formed in each district.

And be it enacted, That for the purpose of electing members of the House of Assembly and of the district councils in the said United Province, each of the said districts shall be subdivided into *nine* electoral divisions, which shall be formed and bounded in such manner as shall be determined by the said arbitrators.

7. Regard to be had to the provincial Act of Upper Canada, 60 Geo. 3.

And whereas an Act was passed by the provincial legislature of Upper Canada in the sixtieth year of the reign of his Majesty King George the Third, intituled "An Act for increasing the representation of the Commons of this province in the House of Assembly," whereby provision was made for the then present and the future representation of the towns and counties formed or to be formed within the said province, according to a certain scale therein mentioned; BE it enacted, that in forming the said electoral divisions regard shall be had, so far as is practicable, to the general principles established by the said Act, so far as the same determine or relate to the proportions to be observed between the number of the representatives for each of the counties therein mentioned, and the extent of the population and territory comprised in every such county.

8. Legislature of

And be it enacted, That it shall be lawful for the legislature of the

United Province may alter the districts and divisions.

united province to alter the boundaries and the number of the districts of the said united province, and also to alter the boundaries and the number of the electoral divisions in any district: provided always, That any bill to be passed by the legislative council and House of Assembly for the purposes aforesaid, or any of them, shall be reserved for the signification of her Majesty's pleasure thereon, and it shall not be lawful for her Majesty to signify her assent thereto until after the same shall have been laid before both Houses of Parliament for at least *thirty* days.

9. Governor and executive council of united province to have all the powers of governor and council of the two provinces.

II. *Executive Authority in the United Province.*

And be it enacted, That all powers and functions which by the said Act of the thirty-first year of the reign of King George the Third, or by any other Act of Parliament, are vested in, or authorized or required to be exercised by, the respective governors of the said provinces of Upper Canada and Lower Canada, with the advice of the executive council of such provinces respectively, shall and may, so far as the same are not contrary to or inconsistent with the provisions of this Act, be vested in and exercised by the governor of the said united province, with the advice of such executive council as may be appointed by her Majesty for the affairs of the said united province.

10. Legislature to consist of governor, legislative council, and House of Assembly.

III. *Legislature of the United Province.*

And be it enacted, That the governor of the said united province, acting in the name and on the behalf of her Majesty, and a legislative council, and a House of Assembly, to be constituted and summoned respectively as hereinafter provided, shall constitute the legislature of the said united province.

11. Constitution of the legislative council.

And be it enacted, That it shall be lawful for her Majesty, by any commission to be issued from time to time under the great seal of the United Kingdom, or by any instructions under her Majesty's sign manual, to summon, before the time to be appointed for the meeting of the legislature in the year one thousand eight hundred and *forty-two*, and thenceforth from time to time, such and so many persons as to her Majesty shall seem fit to be councillors in the said legislative council: provided always, That it shall be lawful for her Majesty, by any such commission or instruction, from time to time to delegate and commit to the governor of the said united province the power of summoning, in the name and on the behalf of her Majesty, any such councillors, which delegated power shall be exercised by such governor, subject to any such restrictions in that behalf as shall or may be imposed by any such commission or instructions; and provided also, That such council shall not at any time consist of less than *twenty* councillors.

12. Who may be legislative councillors.

And be it enacted, That such persons only shall be capable of being summoned as members of the legislative council of the said united province as shall have filled, but shall have ceased to hold, the office of judge of the superior courts of the provinces of Upper or Lower

Canada respectively, or of the united province, or shall have held or shall at the time of being summoned hold the office of colonel of militia, or of member of the executive council or of the assembly in either of the provinces or in the united province, or the office of member of the legislative council of either of the said provinces, or of chairman of any district council, or of mayor of any incorporated town or city within the said provinces or the said united province.

13. Legislative councillors to continue in office eight years from their appointment.

And be it enacted, That every legislative councillor shall continue in office for the term of *eight* years, to be computed from the date of his being summoned, unless he shall sooner die or resign his office, or forfeit the same in manner hereinafter mentioned, and at the end of *eight* years the appointment of every such legislative councillor shall determine: Provided always, That upon such determination of his office, he may immediately, or at any time thereafter, except in cases of death or forfeiture, be again summoned to the same office.

14. Legislative councillors, bankrupt or insolvent, or convicted of treason or felony, to forfeit their office.

And be it enacted, That any legislative councillor may resign his office; and if any legislative councillor shall after his appointment become bankrupt or take the benefit of any laws relating to insolvents, or shall compound with his creditors, or shall be attainted of treason or felony, he shall thereupon and in any such case forthwith forfeit and cease to hold the office of legislative councillor.

15. Five to constitute a quorum of the legislative council.

And be it enacted, That in order to constitute a meeting of the said legislative council there shall be *five* councillors at least present, and that no business shall be done, and no decision shall be come to by any such meeting unless there shall be *five* councillors present, except adjourning the said meeting.

16. Governor to appoint the president.

And be it enacted, That it shall be lawful for the governor of the united province from time to time, so often as there shall be occasion, to appoint one of the said councillors to be the president of the legislative council, and also to remove the person so appointed, and to appoint any other of the said councillors to be such president.

17. President to have a casting vote.

And be it enacted, That all questions which shall arise in the said legislative council shall be decided by the majority of voices of the councillors present other than the president; and where the same shall be equal, the president shall have a casting vote.

18. Assembly to consist of two members for each electoral division, and of members for Quebec, Montreal, Toronto, and Kingston.

And be it enacted, That the first assembly of the said united province that shall be elected under the powers contained in this act shall consist of *ninety-eight* members, to be chosen as hereinafter mentioned; (that is to say) for every electoral division in each district of the said united province, *two* members shall be elected to represent such division in the said assembly; and *two* members shall be elected for each of the cities of Quebec, Montreal, and Toronto, and for the town of Kingston respectively.

And be it also enacted, That until provision shall be otherwise made by law within the said united province, every assembly thereof

other than the first shall consist of the same number of members, to be chosen as hereinbefore mentioned.

19. Powers of the governor of Upper Canada to summon the legislature, and laws as to annual sessions, and qualification of members to extend to the united province.

And be it enacted, That until provision shall be otherwise made by law within the said united province, all and every the powers now by law vested in the governor of the province of Upper Canada for fixing the place and time of holding the sessions of the legislature of that province, and for proroguing any such session, and for dissolving the said provincial legislature, shall be vested in the governor of the said united province in respect of the legislature thereof; and all the laws now in force in the said province of Upper Canada relating to the holding an annual session of the said legislature, or relating to the continuance of the assembly thereof, or relating to the qualification or disqualification of any person to be elected, or to sit or vote as a member of the said assembly, shall extend and be applied to the legislature of the said united province and to the assembly thereof.

20. Existing election laws within the provinces to be applied to the election of members of the assembly of the united province.

And be it enacted, That until provision shall be otherwise made by law within the said united province, the house of assembly of the said united province shall from time to time be summoned to meet for the despatch of business by the governor of the said united province, in the same manner and form as is now observed by law by the governor of the province of Upper Canada in summoning the legislature of that province; and that until provision shall be otherwise made as aforesaid, the writs for the election of members to serve in the said assembly of the said united province shall be directed to such person as the governor shall appoint, by writing under his hand, to be the returning officer of each district thereof, and shall be executed within each electoral division of every such district by a returning officer to be for that purpose appointed by the returning officer of the district; and that until provision shall be otherwise made as aforesaid, all the laws now in force within the said province of Upper Canada, and all the laws which before the passing of an act made and passed in the last session of parliament, intituled "An Act to make temporary Provision for the Government of Lower Canada," were in force in the said province of Lower Canada relating to the forms of writs for the election of members of the assembly in the said respective provinces, and to the time within which the same shall be made returnable, and to the manner of executing the same, and to the issuing and execution of new writs in case of any seat being vacated otherwise than by a dissolution of the assembly, and to the appointment of the time and the place for holding the election of members of the assembly, and to the conduct of such elections, and to the payment of any lawful expenses attendant thereon, and to the qualification or disqualification of voters at any such elections, and to the oaths to be taken by any such voters, and to the oaths to be taken by members of the assembly, shall be respectively applied to elections for members of the assembly of the united province, the laws now in force within the province of Upper Canada in respect of the several matters aforesaid being applied to the election of members for any electoral division situate within that

part of the united province now forming the province of Upper Canada; and the laws which, until the passing of the said act of the last session of parliament, were in force within the said province of Lower Canada in respect of the several matters aforesaid being applied to the election of members for any electoral division situate within that part of the united province now forming the province of Lower Canada: Provided always, That no elector shall be entitled to more than one right of voting for any one electoral division, but that a qualification within the division which would have been sufficient in amount to have enabled a person to vote at any election, either for a town or county in the said respective provinces, shall entitle the elector to vote for the division.

21. Legislature of united province may alter the regulations respecting the number of members of assembly, &c.

And be it enacted, That, anything herein contained to the contrary notwithstanding, it shall be lawful for the legislature of the said united province from time to time, by any law or laws to be for that purpose made, to make such provision as to them shall seem meet respecting the number of the members of the said assembly, or the time and place of holding the sessions of the said legislature, or the prorogation of any such session, or the dissolution thereof, or the continuance of the assembly of the said united province, or the qualification or disqualification of any person to be elected, or to sit or vote as a member of the said assembly, or the summoning the said assembly for the despatch of business, or the issuing writs for the election of members to serve therein, or the appointment of returning officers, or the forms of writs for the election of members of the said assembly, or the making returns to or the execution of any such writs, or the appointment of the time and place for holding election of members, or the conduct of such elections, or the payment of any lawful expenses attendant thereon, or the qualification or disqualification of voters at any such election, or the oaths to be taken by any such voters or by members of the assembly; Provided that any bill to be passed by the legislative council and house of assembly affecting the powers of the governor for fixing the place and time of holding sessions of the legislature of the said united province, for proroguing any such session, or for dissolving the provincial legislature, or relating to a continuance of the assembly thereof, shall be reserved for the signification of her Majesty's pleasure thereon, and it shall not be lawful for her Majesty to signify her assent thereto until after the same shall have been laid before both houses of parliament for at least *thirty* days.

Proviso reserved for the signification of her Majesty's pleasure any such bills in certain cases.

22. Assembly to elect their speaker.

And be it enacted, That the members of the assembly shall, upon their first assembling after every general election, proceed forthwith to elect one of their number as speaker; and in case of his death, resignation, or removal by a vote of the said assembly, the said members shall forthwith proceed to elect another of their members as such speaker; and the said speaker shall preside at all meetings of the assembly.

23. Speaker to have

And be it enacted, That *twenty* members of the assembly shall

a casting vote; twenty members to form a quorum.

form a quorum thereof, and that all questions which shall arise in the assembly shall be decided by the majority of voices of such members as shall be present other than the speaker, and where the same shall be equal the speaker shall have a casting voice.

24. Power of provincial legislature to make laws.

And be enacted, That it shall be lawful for the legislature of the united province to make laws for the peace, order, welfare, and good government of the said united province and every part thereof, which, when assented to by or on behalf of her Majesty in manner hereinafter provided, shall be valid and binding to all intents and purposes whatsoever within the said united province, except in such cases as are by this act excepted.

25. Governor may assent to or withhold assent from bills, or may reserve them for her Majesty's pleasure.

And be it enacted, That whenever any bill which has been passed by the legislative council and by the house of assembly shall be presented for her Majesty's assent to the governor of the said united province, such governor is hereby authorized and required to declare, according to his discretion, but subject nevertheless to the provisions contained in this act, and to such instructions as may from time to time be given in that behalf by her Majesty, that he assents to such bill in her Majesty's name, or that he withholds her Majesty's assent from such bill, or that he reserves such bill for the signification of her Majesty's pleasure thereon; and any bill assented to by the said governor shall have full force of law as an act of the said legislature, unless and until the same shall be disallowed by her Majesty in manner and within the time hereinafter mentioned.

26. Governor to transmit bills assented to to the secretary of state, and they may be disallowed by her Majesty within two years.

Provided always, and be it enacted, That whenever any bill shall have been presented for her Majesty's assent to the governor, and shall have been assented to by him in her Majesty's name, and shall have thereby become an act of the legislature, such governor shall, by the first convenient opportunity, transmit to one of her Majesty's principal secretaries of state an authentic copy of the act so assented to; and it shall be lawful at any time within *two* years after such act shall have been received by such secretary of state for her Majesty, by her order in council, to declare her disallowance of such act, and such disallowance, together with a certificate under the hand and seal of such secretary of state, testifying the day on which such act was received as aforesaid, being signified by the governor by speech or message to the legislative council and assembly of the United Province or by proclamation, shall make void and null the said act, from and after the date of such signification.

27. Reserved bills to be transmitted to the secretary of state, and to have no effect unless assented to within two years.

And be it enacted, That an authentic copy of every bill which shall be reserved for the signification of her Majesty's pleasure thereon shall also be transmitted by the first convenient opportunity to one of her Majesty's principal secretaries of state, and shall not have any force or authority within the said United Province until the governor shall signify, either by speech or message, to the legislative council and assembly of such province, or by proclamation, that such bill has been laid before her Majesty in council, and that her Majesty has been

pleased to assent to the same; and an entry shall be made in the journals of the said legislative council of every such speech, message or proclamation, and a duplicate thereof, duly attested, shall be delivered to the proper officer to be kept amongst the public records of the province; and no bill which shall be so reserved as aforesaid shall have any force or authority within the said United Province unless her Majesty's assent shall have been so signified as aforesaid within the space of *two* years from the day on which the transcript of such bill shall have been received by the secretary of state for her Majesty's assent; a certificate of the date of which receipt, under the hand and seal of such secretary of state, shall be transmitted back to the governor with her Majesty's assent to such bill.

28. No act of the provincial legislature to be valid as against this act or as against any act regulating trade, or expressly relating to the province.

Provided always, and be it enacted, That no act of the legislature of the United Province shall be valid or binding, or of any force or effect whatsoever, so far as it shall be inconsistent with the provisions of this act, or inconsistent with the provisions of any act of parliament passed or to be passed for the regulation or protection, or for imposing or collecting duties in respect of the regulation or protection, of commerce between the said provinces or United Province and any other part of her Majesty's dominions, or the dependencies thereof, or between the said provinces or United Province and any foreign country or state, or for varying such duties or allowing drawbacks thereon, or of any act of parliament passed or to be passed which shall, either by express words or necessary intendment, extend to the said provinces of Upper and Lower Canada or the said United Province.

29. Nor which may affect the succession to the crown or foreign treaties, or the relations of peace or war.

Provided also, and be it enacted, That no act of the legislature of the United Province shall be valid or of any force or effect, so far as it relates to or affects the succession of the Imperial Crown of these realms, or so far as it shall be contrary to or interfere with the operation of any treaty now subsisting or which shall at any time hereafter be concluded between her Majesty and any foreign state, or shall affect the relations subsisting between her Majesty and any foreign state in respect of peace or war.

30. Bills affecting any district separately, or the tenure of land, or the language in courts of justice or religious or educational institutions, to be reserved for her Majesty's pleasure, if required by an address of the district council.

And be it enacted, That if any bill shall be passed by the legislative council and assembly of the said United Province which shall not be applicable to the whole province, and shall affect some one or more district or districts or other local division of the said United Province, or of any bill, whether local or general, shall purport to abolish or alter the tenure upon which lands are holden in any district, or shall provide for any change in the language in which justice is administered within any district or shall in any way affect the celebration of divine worship or any other religious observance, or any existing institution for the maintenance or advancement of education or religious instruction in any district, then and in every such case the governor of the said United Province shall reserve his assent to any such bill for at least *twenty-one* days; and in case the district council of any district affected by any such bill as aforesaid shall, by address to the governor within the said number of days, request him to reserve such bill for

the signification of her Majesty's pleasure, the same shall be observed accordingly; and it shall not be lawful for her Majesty to signify her assent to any such bill until after the same shall have been laid before both houses of parliament for at least *thirty* days.

Local Government.

31. District councils established.

And be it enacted, That in every district of the said United Province there shall be a representative council, to be called the "District Council."

32. To consist of twenty-seven members.

And be it enacted, That every such council shall consist of *twenty-seven* members and no more, unless otherwise directed by the legislature of the United Province under the powers vested in them by this act.

33. First councils to be summoned in 1842.

And be it enacted, That the governor of the said United Province shall by instructions signed by him, and sent to the returning-officer of each district, authorize and require the said returning-officer to summon a district council to meet on some day in the year one thousand eight hundred and *forty-two* and at some place within the district to be mentioned in such instructions.

34. Returning-officers to issue writs for the election of members of the district council.

And be it enacted, That every returning-officer receiving such instructions shall, at least *twenty-one* days before the day therein appointed for the meeting of the district council, cause proclamation to be made summoning such council to meet at the time and place named in the said instructions; and shall also within the same time issue and send to the returning-officer of each electoral division a writ returnable within *fourteen* days from the date thereof, requiring him to proceed to the election of *three* members to represent the said division in the district council.

35. Elections to be had as in elections for the assembly.

And be it enacted, That every returning-officer shall duly execute such writ, by giving notice of the time and place of holding the election for members for the district council, in the same manner as in respect of the election of members for the assembly; and that the same laws as are hereinbefore made applicable to the election of members for the assembly shall apply to the election of members for the district council, and to the qualification and disqualification of members and voters, and to the oaths to be taken by such members and voters respectively; but the expense of such elections shall be provided for by the district council out of the monies that shall be raised by them under the powers of this act, and so in all future elections, until the same expenses may be otherwise provided for by the said district council.

36. Persons elected to serve or be fined.

And be it enacted, That every person duly qualified, who shall be elected a member of any district council, shall accept such office, or shall in lieu thereof pay such fine, not exceeding the sum of *twenty-five pounds sterling*, to the treasurer of the district, as the district council shall by any ordinance appoint; such fine to be recovered by action

or suit, to be instituted by the said treasurer, and to be accounted for by him as part of the district fund: Provided, That no person shall be obliged to accept the said office who shall be disabled by permanent infirmity of body or mind, or shall be above the age of sixty-five years, or shall have already served such office, or shall have paid a fine for not serving the same within five years from the day on which he shall be re-elected.

37. One-third of the district councillors to vacate their seats each year.

And be it enacted, That upon the *first day of January* in the year one thousand eight hundred and *forty-three*, and in every succeeding year, one-third of the complete number of councillors in every district council shall vacate their seats; and that in the said year one thousand eight hundred and *forty-three*, and in the next succeeding year, the members who are so to vacate their seats shall be determined by lot, and thereafter those members shall vacate their seat: who have been members for the longest time without re-elections Provided always, That every councillor so going out of office shall be capable of being forthwith re-elected.

38. Members in 1843 and 1844 to vacate by lot.

And be it enacted, That in order to determine the names of the members who are to vacate their seats as aforesaid, in the years one thousand eight hundred and *forty-three* and one thousand eight hundred and *forty-four*, the clerk of the council or other officer appointed for that purpose shall, before the day appointed for the vacating of the said seats, write the name of every member on a piece of paper, and shall fold up such piece of paper, and place the same so folded up in a glass box, from which the names shall be drawn by any person appointed by the said council for that purpose, and the first and other members whose names shall be drawn in succession shall vacate their seats until the whole number of those who are to vacate have been drawn.

39. Elections to take place yearly.

And be it enacted, That on the *fifteenth day of January* one thousand eight hundred and *forty-three*, and in every succeeding year, there shall be held an election in each of the electoral divisions for which any member has vacated his seat in manner hereinbefore prescribed, or for which any extraordinary vacancy shall have occurred during the past year, and where the seat shall have remained vacant, and the returning-officer is hereby authorized and required to cause such election to take place without any special writ or authority for that purpose, and at the same place and in the same manner in all respects as at the last preceding election of district councillors, unless otherwise lawfully directed as to the place and manner of election by the governor of the said United Province.

40. Governor may direct elections to fill extraordinary vacancies.

And be it enacted, That if any extraordinary vacancy shall occur in the number of councillors before the annual day of election hereinbefore appointed, it shall be lawful for the governor of the said United Province, if he think fit (and in case the number of such extraordinary vacancies shall exceed six, he is hereby required), to issue a writ to the returning-officer of the division in which any such vacancy shall have

occurred, directing such returning-officer to proceed to the election of a member or members to supply such vacancy, which the said returning-officer shall proceed forthwith to do in manner hereinbefore directed in respect of other vacancies: Provided always, That if any such writ be issued to supply any extraordinary vacancy, a writ or writs shall at the same time be issued to supply all the existing vacancies: Provided also, That no such writ shall issue at any later period in any year than the *twenty-ninth day of September*; and every member elected on such extraordinary vacancy shall vacate his seat at the time when the person in whose room he shall have been chosen would have regularly vacated his seat, but shall be capable of immediate re-election.

41. Quarterly meetings to be held, and such other meetings as the council shall appoint.

And be it enacted, That there shall be held in each year four quarterly meetings of each of the said district councils on such quarter-days as the said councils respectively shall appoint, and that no previous notice need be given of such quarterly meetings; and in respect of all other meetings of the said district councils, such notice shall be given thereof, and they shall be summoned upon such requisition, and in such manner, as by any ordinance of the said councils respectively shall be directed or appointed.

42. District council to elect a chairman.

And be it enacted, That each of the said district councils shall and may, from time to time, and so often as shall be necessary, elect a chairman, who may be also removed by the council; and such chairman shall preside at all meetings of the said district councils.

43. Chairman to have a casting vote; ten members to form a quorum.

And be it enacted, That *ten* members shall form a quorum of each of the said district councils, and that all questions shall be determined by the majority of voices of the members present at any meeting of the district council, other than the chairman; and in case there shall be an equality, the chairman shall have the casting vote.

44. District council may make ordinances.

And be it enacted, That it shall be lawful for every district council to make ordinances for providing a suitable building for the meetings of the said council, and for maintaining and regulating an effective system of police within the said district, and for the paving and lighting of any town within the said district, and for the making and maintaining or improving of any new or existing road, street, railway, canal, or other convenient communications and means of transit, whether natural or artificial, for passengers, cattle, goods, or merchandize, by land or water, within the limits of the said district, and also all bridges, viaducts, tunnels, cuttings, embankments, and other works connected therewith, or for the stopping up, altering, or diverting of any such road, street, railway, canal, or other sub-communication as aforesaid, and the works connected therewith, and also for any other purpose, matter, or thing, which shall be specially subjected to the direction and control of the said district council by any act of the legislature of the said United Province.

45. And may raise money.

And be it enacted, That it shall be lawful for the said district

council to make ordinances directing the levying and assessing and application of moneys, for effecting all or any of the purposes for which they are empowered to make ordinances as aforesaid, either by imposing tolls and rates, to be paid in respect of any public work, and to be collected and applied as shall be directed by any such ordinance, or by means of a rate or assessment to be assessed and levied upon real or personal property within the said district, or upon the owners or occupiers thereof in respect of such property, and to enforce the collection and payment of all such rates and tolls, or such rates and assessments as aforesaid, by reasonable penalties, and also to make ordinances for the levying of moneys by such rate or assessment as aforesaid, and applying the same in or towards the payment of all necessary expenses incurred or estimated as likely to be incurred for the current year in respect of the local government of the said district, either on account of the lawful expenses of returning officers at elections of members for the district council, or the salaries of officers, or otherwise howsoever.

46. Clerk and treasurer to be appointed.

And be it enacted, That some proper person shall, so soon as may be after the first meeting of each district council, in the year one thousand eight hundred and *forty-two*, be appointed by an ordinance of the said council to act as clerk of the council, and some other person shall in like manner be appointed to act as treasurer of the district, with such salaries respectively, and subject to such regulations, as may be appointed and declared by the same or any other ordinance of the said council; and such clerk and treasurer respectively may be removed by a like ordinance, and some other proper person appointed in their stead respectively, and so from time to time as occasion shall require.

47. Treasurer to receive and account for moneys received in the district.

And be it enacted, That the treasurer of each district shall receive all moneys which shall be raised under any ordinance of the district council, unless otherwise especially appropriated, and also all moneys which may at any time be directed by the legislature of the United Province to be paid to any such treasurer for public objects or purposes within the district, and shall apply and account for the same in manner to be directed by ordinance of the district council.

48. Governor may disallow ordinances within two months after receiving a copy thereof.

Provided always, and be it enacted, That a copy of every ordinance to be made by any district council under and by virtue of this Act shall be transmitted by the chairman with all convenient speed after the making of such ordinance to the governor of the said United Province; and it shall be lawful for the said governor, by writing under his hand, at any time within *two calendar months* after receiving such copy, to certify to the said chairman his disallowance of any such ordinance; and thereupon every such ordinance shall cease to be of any effect, but unless and until so disallowed, every ordinance to be made by the said district council under the authority of this Act shall have the full force of law within the district: Provided also, That no ordinance of any district council shall be of any force or effect whatsoever, so far as it shall be repugnant to or im-

pede the full operation within the district of any act of the legislature of the United Province.

49. Legislature of United Province may alter regulations respecting district councils.

And be it enacted, That, anything herein contained to the contrary notwithstanding, it shall be lawful for the legislature of the said United Province, from time to time, by any law or laws to be for that purpose made, to make such provision as to them shall seem meet respecting the number of the members of any such district council, or the mode of summoning such council, or the issuing and return of writs for the election of the members thereof, or the execution of such writs, or the election of members of any such district council, or the qualification and disqualification of the members and voters for the same, or the oaths to be taken by such members and voters, or the expense of such elections, or the fines to be payable for persons declining to act as members thereof, or the vacating the seats of such members or the times at which such elections shall take place, or the manner of filling up extraordinary vacancies in any such council, or the meeting of any such council, or the appointment of the officers of any such council, or the duties of any such officers.

V. *Finance.*

50. After January, 1842, the revenues of the two provinces to form a consolidated fund of the United Province.

And be it enacted, That on and after the said *first day of January* one thousand eight hundred and *forty-two*, all and singular the duties and revenues over which the respective legislatures of the said provinces of Upper Canada and Lower Canada have or before the passing of the said Act of the last session of Parliament had any power of appropriation, shall form one consolidated fund or revenue to be appropriated for the public service of the said United Province, except as hereinafter is specially excepted and provided, and subject to the charges hereinafter mentioned.

51. Local revenue not to form part of the consolidated fund, and to be distinguished by arbitrators.

Provided always, and be it enacted, That the arbitrators to be appointed as hereinafter mentioned shall, before the *twenty-ninth day of September* one thousand eight hundred and *forty-two*, ascertain and distinguish what parts and proportions of the said duties and revenues are to be taken as forming the general duties and revenues of the said provinces, or either of them, and as being applicable to the general public service thereof, and also what part of the said duties and revenues are derived from local rates and assessments, or at the time of such inquiry may be appropriated to any local purpose; and the revenues derived from such local rates or assessments, or appropriated to any local purpose, shall not form part of the consolidated fund or revenue of the United Province, but shall continue to be raised and applied as before, subject to any act of the legislature of the United Province, or ordinance of any district council hereby authorized to be made, under the powers and authorities in them respectively vested by this Act.

52. Arbitrators to ascertain amount of debt

And be it enacted, That the said arbitrators shall also inquire into and ascertain the amount of debt chargeable on the aforesaid general duties and revenues of either province, on the said *twenty-ninth day*

of September one thousand eight hundred and *forty-two*, and such amount shall thenceforth be charged on the consolidated fund of the United Province. chargeable on the general revenues on 29th Sept. 1842.

53.

And be it enacted, That the said arbitrators shall also inquire into and ascertain the total annual charge or amount which at the passing of this Act is payable by law in the said two provinces, or either of them, for the maintenance and support of the governors, judges, attorneys and solicitors general, provincial secretaries and civil secretaries thereof respectively, and for the contingencies and expenses of the several departments of the aforesaid public officers, and shall also ascertain the appropriation thereof; and such charge, when ascertained, shall, on and after the *first day of January* one thousand eight hundred and *forty-two*, form a permanent charge on the consolidated fund or revenue of the said United Province, and shall be appropriated permanently as a civil list for the maintenance and support of the aforesaid public officers and their several departments, and shall be applied accordingly by the governor of the United Province acting therein under the instructions of one of her Majesty's principal secretaries of state, and an account of such application shall be laid every year by the said governor before the legislative council and the assembly of the said United Province by message or otherwise. And the amount of the civil list at passing of this Act, which shall form a permanent charge on the consolidated fund.

54.

And be it enacted, That the said consolidated fund or revenue of the United Province shall also be permanently charged with all and singular the costs, charges, and expenses incident to the collection, management and receipt thereof, such costs, charges and expenses being subject nevertheless to be reviewed and audited, in such manner as shall be directed by any act of the legislature of the said United Province. Consolidated fund to be charged with expense of collection and management;

55.

And be it enacted, That the said consolidated fund or revenue shall be further charged with the payment of the lawful costs, charges and expenses of the said arbitration, and with the lawful costs, charges and expenses of returning-officers at elections of members of the assembly, all the aforesaid costs, charges, and expenses being subjected to be reviewed and audited, in such manner as shall be directed by any act of the legislature of the United Province. payment of salaries, expenses of arbitration and of returning officers.

56.

And be it enacted, That the expenses of the collection, management and receipt of the said duties and revenues shall form the first charge on the said consolidated fund; and that the civil list to be ascertained as aforesaid, and such other costs, charges and expenses as are hereby charged on the said consolidated fund, shall form the second charge thereon; and that the annual interest of the public debt, to be ascertained as aforesaid, or of the debt which may hereafter become chargeable on the consolidated fund of the united province, shall form the third charge thereon. Charges on consolidated fund:—1st. Expense of collection; 2d. The civil list expenses charged; 3d. Interest of debt.

57.

And be it enacted, That, subject to the several payments hereby Subject to the

above charges, the consolidated fund to be appropriated by the provincial legislature by bills originating in the house of assembly for objects recommended by the governor.

charged on the said consolidated fund or revenue, the same shall be appropriated by the legislature of the said united province for the public service, in such manner as they shall think proper: Provided always, that all bills for appropriating any part of the said consolidated fund or revenue, or for imposing any new tax or impost, shall originate in the house of assembly: Provided also, that it shall not be lawful for the said house of assembly to originate or pass any vote, resolution, or bill for the appropriation of any part of the said consolidated fund or revenue, or of any other tax or impost, to any purpose which shall not have been first recommended by a message of the governor to the said house during the session in which such vote, resolution, or bill shall be passed.

VI.—*Arbitrators.*

58. Four arbitrators to be appointed, two by each province, and to appoint an umpire.

And be it enacted, That for the purposes which are by this Act referred to the determination of arbitrators, there shall be nominated and appointed *four* arbitrators with all convenient speed after the *passing of this act*; and *two* of the said arbitrators shall be appointed by an act of the legislature of the province of Upper Canada, and the other *two* arbitrators shall be appointed by an ordinance to be made by the existing legislature of the province of Lower Canada; and such arbitrators shall, within *one* calendar month after the appointment of the *four* arbitrators, nominate and appoint by an instrument or instruments under their hands and seals an umpire.

59. In default of such appointment, her Majesty may appoint.

And be it enacted, That in case such arbitrators shall not be appointed in manner aforesaid within *six* calendar months after the *passing of this act*, or in case such appointment as aforesaid of an umpire shall not be made within *one* calendar month from the appointment of all the said arbitrators, then and in either of such cases it shall be lawful for her Majesty, by an instrument under her sign manual, to appoint any person or persons resident within the province, in respect of which the arbitrator or arbitrators shall not have been appointed, to be an arbitrator or arbitrators, to fill up their number, and also to appoint any person to be such umpire as aforesaid.

60. Arbitrators may be removed.

And be it enacted, That each of the said arbitrators shall be liable to be removed by the party by whom any such arbitrator shall respectively have been appointed.

61. Vacancies to be supplied.

And be it enacted, That in case of the death, resignation, removal, or refusal to act of any of the said arbitrators, or the death, resignation, or refusal to act of the said umpire, another arbitrator or umpire shall be appointed in his stead, in the same manner and by the same parties respectively, and subject to the same restrictions, as such arbitrator so dead, resigning, removed, or refusing to act as aforesaid, or such umpire, was originally appointed; and the place of every arbitrator appointed by the legislature of either province, and also the place of an umpire appointed by the arbitrators, shall be filled up within *one calendar month* of the vacancy taking place, or in default by

her Majesty, as hereinbefore provided in the case of an original appointment.

62. Powers to arbitrators to send for papers and records.

And be it enacted, That the said arbitrators shall have power to send for and examine such persons, papers, and records as they shall judge necessary for their information in the matters referred to them; and that if any person shall refuse or neglect to attend the said arbitrators, or to produce before them any papers or documents, having been duly served with reasonable notice in writing for that purpose, he shall forfeit and pay to the said arbitrators the sum of *fifty pounds*, to be recovered by bill, plaint, or information in any court having competent jurisdiction within the province in which such person usually resides, to be applied towards the expenses of the said arbitration, and to be accounted for by the said arbitrators accordingly.

63. And examine witnesses on oath.

And be it enacted, That the witnesses to be produced before the said arbitrators, if so required, shall and may be sworn before any of the said arbitrators, who are hereby empowered jointly and severally to administer such oath; and that if any person shall in any such oath wilfully forswear himself, he shall be deemed guilty of wilful and corrupt perjury.

64. Questions to be decided by a majority of votes.

And be it enacted, That all questions depending before the said arbitrators shall be decided by a majority of votes, and in case of the votes of the said arbitrators on any such question being equally divided, their said umpire shall have a casting vote.

65. Determination of arbitrators final, unless parliament address her Majesty to the contrary.

And be it enacted, That the adjudication and determination of the said arbitrators or of their umpire, in respect of the matters referred to them by this act, shall be transmitted with all convenient speed by the said arbitrators or umpire respectively to one of her Majesty's principal secretaries of state, in order that the same may be submitted to her Majesty in council; and if the same shall be respectively allowed by her Majesty in council, then from and immediately after such allowance (to be testified by her Majesty's sign manual) every such adjudication and determination shall be binding and conclusive, and shall have the force of law in the said united province: provided always, that no such adjudication or determination shall be allowed by her Majesty in council until after the same shall have been laid before both houses of parliament for at least *thirty* days.

66. Where Sunday, Good Friday, or Christmas-day intervene, all business to be done on the next day.

And be it enacted, That wherever any act, matter, or thing is by this act directed to be done on any day or at the expiration of any number of days, or for any number of successive days, and the day in which such matter or thing is to be done or to be continued to be done shall happen to be a Sunday or Good Friday or Christmas-day, the same shall be done on the next succeeding day in lieu thereof.

67. Affirmation may be substi-

And be it enacted, That in all cases where any oath is required to be taken or administered by this act, all persons who by the law of

tuted for oath in certain cases.

the said provinces of Upper Canada and Lower Canada or either of them or of the united province are or may be permitted to make affirmation in lieu of oath, may substitute an affirmation in lieu of the oath hereby required to be taken.

VII.—*General Saving of Rights.*

68. Act not to affect or empower provincial legislature to affect the capitulation nor any temporal or spiritual rights of ecclesiastics and ministers of religion.

And be it enacted, That nothing herein contained shall affect or vary or authorise the legislatures of the said provinces or of the said united province respectively to affect or vary any of the terms of the capitulation under which the province of Quebec was surrendered in respect of religious worship or the temporal rights and privileges of the ministers of religion, or any of the spiritual or temporal rights or privileges of the clergy of the united church of England and Ireland, or of the ministers of the church of Scotland, or of any other religious profession within either of the provinces of Upper and Lower Canada or the united province.

69. Powers of the former legislature, in respect to the maintenance of religion, extended to the new legislature.

And be it enacted, That all such powers and functions as by the said act of the thirty-first year of the reign of King George the Third, or by any other act of parliament, are vested in the legislature of Upper Canada and Lower Canada respectively, respecting the maintenance of religion, or respecting any lands or funds set apart for that purpose, may, so far as the same are not contrary to or inconsistent with the provisions of this Act, be exercised by the legislature of the united province, but shall nevertheless be exercised subject to all such restrictions or provisions as are contained in or imposed by the said Act of the thirty-first year of the reign of King George the Third, or by any other such Act of parliament as aforesaid in that behalf, the said restrictions and provisions being applied to the acts of the legislature of the united province in like manner as they would have been applicable to the acts of the respective legislatures of the said provinces.

70. General saving of existing laws not repugnant to this act.

And be it enacted, That all laws, statutes, and ordinances which shall be in force on the *first day of January* one thousand eight hundred and *forty-two* within the said provinces of Upper Canada and Lower Canada, or either of them, or any part thereof respectively, shall remain and be of the same force, authority, and effect in each of the said provinces respectively, after their union, as if this Act had not been made, except in so far as the same are expressly repealed or varied by this Act, or are contrary to or inconsistent with the provisions thereof, subject nevertheless to any alteration thereof under the powers hereby vested in the legislature of the said united province.

71. Saving of the rights of her Majesty and of the imperial parliament.

And be it enacted, That nothing in this Act contained shall affect or vary any of the rights of her Majesty or of the imperial parliament of the united kingdom any further or otherwise than is hereby expressly enacted and provided.

72. In certain cases governor of the two provinces may act before the union, instead of governor of united province.

And be it enacted, That wherever any matter or thing is by this Act authorised or required to be done by the governor of the united province, with a view to the constitution of the legislature of the said united province, or otherwise with a view to the union of the said provinces, it shall be lawful for her Majesty, if she shall think proper, by instructions under her sign manual, to authorise the same matter or thing to be done by the governor-general of the two provinces at any time before their union.

73. Explanation of certain words in the Act.

And be it enacted, That whenever in this Act her Majesty is named, the heirs and successors of her Majesty shall be also implied and intended; and that whenever the governor of the provinces of Upper Canada and Lower Canada, or of the united province, is named, any lieutenant-governor or other person appointed by her Majesty who shall for the time being preside over the government of the said provinces or province shall be also implied and intended; and that by the word "legislature" in this Act shall be intended the constituted authorities capable of making valid and binding laws within their respective jurisdiction, unless in any of the above cases the construction of the Act shall plainly require the contrary.

74. Further interpretation of words in the Act.

And be it enacted, That in the interpretation of this Act words in the singular number shall be construed as extending to the same persons or things in the plural number and the converse; and words in the masculine gender shall be construed to include the female gender, unless the construction of the act shall plainly require the contrary.

75. Act may be altered this session.

And be it further enacted, That this Act may be amended or repealed by any Act to be passed in the present session of parliament.

London: Printed by W. Clowes and Sons, Stamford-street.